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11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14

15 PRAGER UNIVERSITY,

16 Plaintiff,

17 vs.

18 GOOGLE LLC, a Delaware limited liability
company, YOUTUBE, LLC, a Delaware
19 limited liability company, and DOES 1-25,

20 Defendants.
21

Case No.

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
DECLARATORY JUDGMENT**

**[COMPLEX DESIGNATION
REQUESTED PURSUANT TO CAL.
RULES OF COURT, RULES 3.400-3.403]**

JURY TRIAL DEMANDED

Action Filed:
Trial Date: None Set

1 Plaintiff Prager University (“PragerU”) brings this complaint for damages and equitable
2 and declaratory relief against Defendants YouTube, LLC (“YouTube”) and its parent company,
3 Google LLC (Google), collectively referred to as “Google/YouTube” or “Defendants,” unless
4 otherwise specified.

5 **I. PREFATORY STATEMENT**

6 1. Plaintiff Prager University brings this lawsuit to redress and enjoin Defendants
7 Google/YouTube from continuing to unlawfully restrict and restrain speech and expression on the
8 global social media and video sharing platform known as YouTube.

9 2. YouTube is unique among other global social media platforms because its owners
10 Google/YouTube monetize the site by inducing consumers like PragerU to post content to the site
11 by expressly designating YouTube as a public forum for speech and inviting the public to engage
12 in “freedom of expression” through the posting and viewing of video content and expression.
13 Google/YouTube also promise that they filter and regulate that content under viewpoint and
14 content-neutral criteria that apply equally “to everyone.”

15 3. Despite these and other express representations to consumers about the public
16 nature and character of YouTube, Google/YouTube continue to restrict and restrain viewer access
17 to educational videos that PragerU produces and uploads to YouTube for any reason or no reason,
18 no matter how arbitrary, capricious, discriminatory, anticompetitive, or unlawful because
19 YouTube is privately owned and too big to be subjected to legal scrutiny.

20 4. This lawsuit is “round two” of the parties’ dispute over whether Google/YouTube
21 are above the law when it comes to regulating free speech and expression on YouTube solely
22 because Defendants are private entities who own and operate YouTube for their own profit and
23 commercial gain. In the first lawsuit, *Prager University v. Google, LLC, et al.*, U.S.D.C. Northern
24 District of California (San Jose Division) Case No. 5:17-cv-06064-LHK, *now pending on appeal*
25 *before the* U.S.C.A. Ninth Circuit, Appeal No.18-15712 (the “federal action”), the parties are
26 litigating the extent to which naked title defense immunizes Google/YouTube’s conduct from
27 judicial scrutiny under the First Amendment and Lanham Act unfair business practices claim.

28 5. In adjudicating those two federal law claims, however, the district court declined to

1 exercise supplemental jurisdiction over all of PragerU’s other claims asserted under California
2 law. Specifically, the district court found that “comity” dictated those claims be litigated in state
3 court to “enable[] California courts to interpret questions of state law,” including the “especially
4 important consideration in the instant case that demands an analysis of the reach of Article I,
5 section 2 of the California Constitution in the age of social media and the Internet.” [Federal
6 action, District Court Order Granting Defendants’ Motion to Dismiss Plaintiff’s Federal Causes of
7 Action; Dismissing Plaintiff’s State Law Causes of Action; and Denying Plaintiff’s Motion for
8 Preliminary Injunction (the “Order”), Dkt. #54 at 26:12-18.]

9 6. At the federal court’s express direction, therefore, PragerU files this lawsuit in this
10 state court asserting that Google/YouTube’s regulation and restraint of PragerU’s speech on
11 YouTube violates California law in at least four ways: (i) unlawfully restraining free speech and
12 expression in violation of Article One, Section 2 of the California Constitution (the “Liberty of
13 Speech Clause”); (ii) discriminating against PragerU (and other users) based on political, religious
14 or other discriminatory animus in violation of the Unruh Civil Rights Act, Section 51, *et seq.* of
15 the California Civil Code (the “Unruh Act”); (iii) engaging in unlawful, misleading, and unfair
16 businesses practices in violation of the Unfair Competition Laws, Section 17200, *et seq.* of the
17 California Business and Professions Code (the “UCL”); and (iv) violating YouTube’s terms of use,
18 “Community Guidelines,” and other content-neutral filtering policies and procedures (the
19 “Contract Claim”).

20 **II. INTRODUCTION AND SUMMARY**

21 7. PragerU is a non-profit, 501(c)(3) tax exempt, educational organization that
22 promotes discussions on historical, religious, and current events through the dissemination of
23 educational videos intended for younger, student-based audiences between the ages of 13 and 35.
24 The videos depict scholars, sources, and other prominent speakers who discuss topics that often,
25 but not always, espouse viewpoints or perspectives that are considered to be in the mainstream of
26 conservative thought.

27 8. Defendants Google/YouTube operate YouTube as the largest and most profitable
28 mechanism for monetizing free speech and freedom of expression in the history of the world.

1 Google/YouTube generates an estimated \$10 to 15 billion in revenue annually¹ by monetizing the
2 video content of public users and viewers like PragerU who are invited to post their video content
3 on YouTube.

4 9. To induce users and content providers like PragerU to upload video content that
5 Google/YouTube then monetizes for profit, Defendants invite the public to use YouTube and
6 provide it with video content by representing specifically that the platform is a public forum for
7 free speech and freedom of expression. Specifically, Defendants designate YouTube as a public
8 place for free speech “define[d]” by “four essential freedoms” that govern the public’s use of the
9 platform:

- 10 1. **Freedom of Expression:** We believe people should be able to speak freely,
11 share opinions, foster open dialogue, and that creative freedom leads to new
12 voices, formats and possibilities.
- 12 2. **Freedom of Information:** We believe everyone should have easy, open
13 access to information and that video is a powerful force for education,
14 building understanding, and documenting world events, big and small.
- 14 3. **Freedom of Opportunity:** We believe everyone should have a chance to
15 be discovered, build a business and succeed on their own terms, and that
16 people—not gatekeepers—decide what’s popular.
- 16 4. **Freedom to Belong:** We believe everyone should be able to find
17 communities of support, break down barriers, transcend borders and come
18 together around shared interests and passions.

17 10. Google/YouTube further induce the public to use YouTube by promising users that
18 “everyone’s voice” may be heard under content-based rules and filtering that “apply equally to
19 all,” regardless of the viewpoint, identity, or source of the speaker. And, on January 17, 2018, and
20 again on July 17, 2018, YouTube’s Assistant General Counsel, Juniper Downs, in response to
21 direct questioning from members of Congress, including the U.S. Senate Commerce Committee,
22 **confirmed that Defendants operate and designate YouTube as a “Public Forum” for speech**
23 **subject to appropriate, neutrally applied content regulations.** [See [https://www.c-](https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism)
24 [span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism](https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism) and
25 [https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices)
26 [filtering-practices.](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices)]
27

28 ¹ <https://www.thestreet.com/investing/youtube-might-be-worth-over-100-billion-14586599>

1 **Senator Cruz:** Thank you Mr. Chairman. Welcome to each of the
2 witnesses. I'd like to start by asking each of the company
3 representatives a simple question, which is: do you consider your
4 companies to be neutral public fora?

5 * * * *

6 **Senator Cruz:** I'm just looking for a yes or no whether you
7 consider yourself to be a neutral public forum.

8 **Senator Cruz:** Ms. Downs?

9 **Ms. Downs:** Yes, our goal is to design products for everyone,
10 subject to our policies and the limitations they impose on the types
11 of content that people may share on our products.

12 **Senator Cruz:** So, you're saying you do consider YouTube to be a
13 neutral public forum?

14 **Ms. Downs: *Correct.*** We enforce our policies in a politically neutral
15 way. Certain things are prohibited by our Community Guidelines,
16 which are spelled out and provided publicly to all of our users.

17 [02:28:30 – 02:29:36 of the full hearing recording.]

18 * * * *

19 **Senator Cruz:** What is YouTube's policy with respect to Prager
20 University and the allegations that the content Prager University is
21 putting out are being restricted and censored by YouTube?

22 **Ms. Downs: *As I mentioned, we enforce our policies in a***
23 ***politically neutral way.*** In terms of the specifics of Prager
24 University, it's a subject of ongoing litigation so I'm not free to
25 comment on the specifics of that case.

26 [02:34:28 – 02:35:29 of the full hearing recording (emphasis added)]

27 11. Those (and many other) representations to the public and Congress are outright
28 falsehoods. Despite their express representations to users and the public that YouTube is a forum
for free speech and expression, Google/YouTube continue to censor, restrict, and restrain video
content based on animus, discrimination, profit, and/or for any other reason "or no reason," no
matter how arbitrary, capricious, or discriminatory. And Google/YouTube admit as much.
Instead of correcting their behavior and bringing their regulation of speech into compliance with
California law, Google/YouTube continue to maintain and apply arbitrary, capricious,
discriminatory and deceptive regulations to restrict speech on YouTube because, as Defendants
argued in federal court, YouTube is a private business and is simply too large to comply with

1 basic constitutional and statutory prohibitions against view point discrimination and unfair,
2 unlawful, or deceptive business practices.

3 12. Defendants are mistaken. Google/YouTube's express designation of YouTube as a
4 public forum for free speech where the public is invited to engage in "freedom of expression,"
5 "freedom of information," "freedom of opportunity," and "freedom to belong," on a global
6 internet platform committed to viewpoint- and content-neutral regulation of speech that applies
7 equally to all, requires that Defendants comply with the protections of the Liberty of Speech
8 Clause when seeking to regulate, restrict, or restrain otherwise protected expression on YouTube.
9 *See Fashion Valley Mall, LLC v. N.L.R.B.*, 42 Cal.4th 850 (2007); *Robins v. Pruneyard Shopping*
10 *Ctr.*, 23 Cal.3d 899, 907–08 (1979), *aff'd*, 447 U.S. 74 (1980). Furthermore, private businesses are
11 not exempt from the anti-discrimination provisions of the Unruh Act, the prohibition on unfair,
12 unlawful, or deceptive business practices under the UCL, or otherwise free to violate or apply their
13 terms of use in bad faith to achieve unlawful purposes.

14 13. Among other restraints of speech, Google/YouTube employ two unlawful content-
15 based restrictions to violate PragerU's rights under California law: (i) "Restricted Mode," a
16 filtering protocol that Google/YouTube use to block what they deem, in their sole, unfettered
17 discretion, to be "inappropriate" for "sensitive" audiences; and (ii) "Advertising Restrictions," a
18 content-based video advertising restriction policy that prohibits potential advertisers from
19 accessing videos that Google/YouTube deem "inappropriate" for advertising.

20 14. Google/YouTube use these filtering mechanisms as a pretext to justify restricting
21 and censoring PragerU's videos. And Google/YouTube continues to do so, even though the
22 content of PragerU videos complies with YouTube's written criteria, including YouTube's Terms
23 of Use, Community Guidelines, and criteria for "sensitive audiences" and advertisers, while
24 failing to restrict the content of other preferred users, its content partners, and now content
25 produced by Google/YouTube that contains obscenity, violence, and unabashed hate speech.
26 Consequently, Restricted Mode and Advertising Restrictions, as well as other content-based
27 filtering criteria are not based or applied on whether the underlying video content is objectively
28 "inappropriate" under California law or even under YouTube's own rules and criteria. Rather, as

1 they readily admit, Google/YouTube use these restrictions to unlawfully discriminate against users
2 like PragerU in order to further Defendants' ideological whims and financial interests and placate
3 their preferred content provider partners, advertisers, senior management, and others who have a
4 an animus-based ideological or financial interest in YouTube.

5 15. To effectuate this unlawful speech filtering practice, Google/YouTube utilize
6 clandestine filtering tools, including A.I. "algorithms" and manual review tools, that are embedded
7 with animus-based computer code, including code that is used to identify and restrict content
8 based on the identity, viewpoint, or topic of the speaker, as well for other anticompetitive or
9 discriminatory purposes that are not based or have little to do with the actual content of the video.

10 16. Furthermore, the YouTube employees charged with administering the restriction
11 criteria and filtering tools, including engineers and others responsible for administering and
12 regulating speech on the platform, operate in a dysfunctional and politically partisan work place
13 environment. Internal Google/YouTube emails make clear that fear and intimidation rule and the
14 "black listing," harassment, shaming, and, in some cases, formal sanctioning of employees who
15 express dissenting views on politics, religion, race, or gender is prevalent.

16 17. Through the unlawful use of intentionally vague, ambiguous, overly broad,
17 subjective, capricious, and other undisclosed criteria embedded in YouTube's content filtering
18 protocol, Defendants exercise sole, unfettered, and absolute discretion to restrict anything that
19 Google/YouTube deem "inappropriate" not because of video content, but because of the
20 viewpoint, identity, or interest of the speaker.

21 18. As a review of the video content restricted by Google/YouTube under Restricted
22 Mode and/or the Advertising Restrictions demonstrates, there is nothing remotely "inappropriate"
23 about the actual content of any PragerU videos. All of these videos utilize respected academics or
24 policy experts to discuss current or historical events in an animated format designed to reach
25 younger audiences between the ages of 13 and 35.

26 19. Indeed, the trier of fact need only compare the video content of the restricted
27 PragerU videos with the videos of Google/YouTube's preferred content providers in the chart
28 below:

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
PragerU Video: Why America Must Lead	https://www.youtube.com/watch?v=MSvWH-Y8eeY	Restricted	PragerU
PragerU Video: Why America's Military Must Be Strong	https://www.youtube.com/watch?v=W5o_KdvC1c8	Restricted	PragerU
PragerU Video: How To Fix the World, NYPD Style	https://www.youtube.com/watch?v=Y-cUr2MYbh8	Restricted	PragerU
PragerU Video: Should America Be the World's Policeman?	https://www.youtube.com/watch?v=176KRhEAgUs	Restricted	PragerU
Similar YouTube videos not restricted:			
How America became a superpower	https://www.youtube.com/watch?v=BShvYeyMm_Y	Not Restricted	VOX
American Decline: Global Power in the 21st Century	https://www.youtube.com/watch?v=1_Eh_QXuW3A	Not Restricted	London School of Economics and Political Science (LSE)
How Powerful is the United States?	https://www.youtube.com/watch?v=PT9OB909VEw	Not Restricted	NowThis World
How America became a superpower and Rich	https://www.youtube.com/watch?v=U5OuCSwOLZk	Not Restricted	NSB TV
5 reason why the USA is a superpower of the world (Most Powerful Country)	https://www.youtube.com/watch?v=DgDrU-1dHgw	Not Restricted	360 Vlog
PragerU Video: Cops Are The Good Guys	https://www.youtube.com/watch?v=F0chi9zD4Zo	Restricted	PragerU
PragerU Video: Is America Racist?	https://www.youtube.com/watch?v=ThRb9x-Riel	Restricted	PragerU
PragerU Video: Are the Police Racist?	https://www.youtube.com/watch?v=UQCQFH5wOJo	Restricted	PragerU
Similar YouTube videos not restricted:			
How to Deal with the Police Parents Explain Cut	https://www.youtube.com/watch?v=coryt8IZ-DE	Not Restricted	CUT
Extra Straight Outta Compton Police = Racism?	https://www.youtube.com/watch?v=UnuJlrAqPWs	Not Restricted	The Young Turks
Racial Anxiety' Overshadows Black Experience In America MSNBC	https://www.youtube.com/watch?v=VFDF1LA9zw4	Not Restricted	MSNBC
America Must Transform Her False Narrative to Tackle Racism	https://www.youtube.com/watch?v=3-YxCB9i46Y	Not Restricted	TEDx Talks
The racist history of US immigration policy	https://www.youtube.com/watch?v=6yiQAmgl5s4	Not Restricted	VOX

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
PragerU Video: What Is Intersectionality?	https://www.youtube.com/watch?v=rc7VUoytoU4	Restricted	PragerU
Similar YouTube videos not restricted:			
Intersectionality 101	https://www.youtube.com/watch?v=w6dnj2lyYjE	Not Restricted	Teaching Tolerance
Kids Explain Intersectionality	https://www.youtube.com/watch?v=WzbADY-CmTs	Not Restricted	Soyheat
Intersectionality Social Inequality MCAT Khan Academy	https://www.youtube.com/watch?v=n2kUpKP18z8	Not Restricted	khanacademy medicine
What Is Intersectionality?	https://www.youtube.com/watch?v=EXJ4Dbdm1ks	Not Restricted	The Advocate
Intersectionality in Feminism and Pizza Akilah Obviously	https://www.youtube.com/watch?v=FgK3NFvGp58	Not Restricted	Akilah Obviously
What is INTERSECTIONALITY? What does INTERSECTIONALITY mean?	https://www.youtube.com/watch?v=wthXUXaP1oQ	Not Restricted	The Audiopedia
PragerU Video: Is Fascism Right or Left?	https://www.youtube.com/watch?v=m6bSsaVL6gA	Restricted	PragerU
PragerU Video: Why Isn't Communism as Hated as Nazism?	https://www.youtube.com/watch?v=nUGkKKAogDs	Restricted	PragerU
Similar YouTube videos not restricted:			
A Top Conservative Said the Alt-Right Are Actually 'Left-Wing Fascists'	https://www.youtube.com/watch?v=9Pj-QuaQ5cM	Not Restricted	TIME
Why did Germany Invade the Soviet Union?	https://www.youtube.com/watch?v=x_xSRBYP0gQ	Not Restricted	The Armchair Historian
The Political Spectrum Explained In 4 Minutes	https://www.youtube.com/watch?v=JIQ5fGECmsA	Not Restricted	The Life Guide
COMMUNIST World vs FASCIST World	https://www.youtube.com/watch?v=t2NL-nElrEs	Not Restricted	The Spiffing Brit
Fascism vs Democracy - What's The Difference?	https://www.youtube.com/watch?v=OLMubDyV63w	Not Restricted	The Infographics Show
What Is Communism?	https://www.youtube.com/watch?v=qElxEyTTKA&t=1s	Not Restricted	NowThis World
Talking About Politics: LEFT WING & RIGHT WING	https://www.youtube.com/watch?v=CDR1zwy9h2Q	Not Restricted	JamesESL English Lessons (engVid)
Communism vs. Socialism: What's The Difference?	https://www.youtube.com/watch?v=FrtdZ-LOXFW&t=7s	Not Restricted	NowThis World

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
PragerU Video: Why America Invaded Iraq	https://www.youtube.com/watch?v=T2tbpUqNwRU	Restricted	PragerU
PragerU Video: Did Bush Lie About Iraq?	https://www.youtube.com/watch?v=LgQw8EhPJWw	Restricted	PragerU
PragerU Video: How Iraq Was Won and Lost	https://www.youtube.com/watch?v=WJIHCczsbJo	Restricted	PragerU
Similar YouTube videos not restricted:			
Iraq: After the Americans (PI) Fault Lines	https://www.youtube.com/watch?v=dwXTUESIEb8	Not Restricted	Al Jazeera English
Responsibly Ending the War in Iraq	https://www.youtube.com/watch?v=WaNIARysUs	Not Restricted	The Obama White House
Did we go to Iraq for oil?	https://www.youtube.com/watch?v=xBQgygqFTA0	Not Restricted	Big Think
Stephen Gets A Straight Answer Out Of Donald Rumsfeld	https://www.youtube.com/watch?v=4Z3z7DvoA-M	Not Restricted	The Late Show with Stephen Colbert
PragerU Video: What is Fake News?	https://www.youtube.com/watch?v=FOZ0irgLwxU	Restricted	PragerU
Similar YouTube videos not restricted:			
Fake news wasn't the biggest media problem of 2016	https://www.youtube.com/watch?v=vdsj-PlqR0g	Not Restricted	Vox
3rd Grader Explains Fake News to Donald Trump	https://www.youtube.com/watch?v=87ehzRV0AI	Not Restricted	Jimmy Kimmel Live
Social Media Companies Tackle Fake News and Abuse	https://www.youtube.com/watch?v=NSS0ePRc1AE	Not Restricted	Wall Street Journal
How Real Is Fake News?	https://www.youtube.com/watch?v=UQcClzjz9_s	Not Restricted	TEDx Talks
Debunking fake news and hoax stories	https://www.youtube.com/watch?v=9vcPJP6AHJc	Not Restricted	CNN
PragerU Video: Israel's Legal Founding	https://www.youtube.com/watch?v=12KJa4a0d64	Restricted	PragerU
PragerU Video: Are Israeli Settlements the Barrier to Peace?	https://www.youtube.com/watch?v=dhbCtAz_BQc	Restricted	PragerU
PragerU Video: Israel: The World's Most Moral Army	https://www.youtube.com/watch?v=tN1MkAGuVyY	Restricted	PragerU
PragerU Video: Does Israel Discriminate Against Arabs?	https://www.youtube.com/watch?v=ocNttZV4G_0	Restricted	PragerU
Similar YouTube videos not restricted:			
Conflict in Israel and Palestine: Crash Course World History	https://www.youtube.com/watch?v=1wo2TLiMhiw	Not Restricted	CrashCourse

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
How The State Of Israel Was Born - Zionism in Animation	https://www.youtube.com/watch?v=7E-P4FG7Utc	Not Restricted	The Jewish Story - In Animation
Israeli settlements, explained Settlements Part I	https://www.youtube.com/watch?v=E0uLbeQlwjw	Not Restricted	Vox
Israel / Palestine - Conflict explained on a map	https://www.youtube.com/watch?v=0vwkfJb7FEc	Not Restricted	Geo History
Israel and Palestine Conflict - Palestine Point of View	https://www.youtube.com/watch?v=AHjwVRBk5UA	Not Restricted	IAS Times
PragerU Video: Gun Rights Are Women's Rights	https://www.youtube.com/watch?v=2iKBEJp92CA	Restricted	PragerU
Similar YouTube videos not restricted:			
Is It The 'Right' Time To Talk About Gun Control? The View	https://www.youtube.com/watch?v=FDbAHx0wBM4&t=1s	Not Restricted	The View
The Second Amendment: How the gun control debate went crazy	https://www.youtube.com/watch?v=fwTN0g4AAkY	Not Restricted	Big Think
Guns Explained With Cats	https://www.youtube.com/watch?v=WxwPcUh97oc	Not Restricted	itsAlexClark
Natalie Morales on gun control	https://www.youtube.com/watch?v=S0lZk2XGvPQ	Not Restricted	Larry King
ERICH v GUN EXPERT: Dawn of Gun Control	https://www.youtube.com/watch?v=nGsFmTmR1zs	Not Restricted	Mumkey Jones 2
PragerU Video: The Strange Death of Comedy	https://www.youtube.com/watch?v=JFIBNwrEI_0	Restricted	PragerU
Similar YouTube videos not restricted:			
Mel Brooks: Political Correctness Is "Death Of Comedy"	https://www.youtube.com/watch?v=sKn50-6x-Gc	Not Restricted	Wochit Entertainment
Bo Burnham on political correctness in comedy	https://www.youtube.com/watch?v=D52TF1OtqSE	Not Restricted	CBS News
Political Correctness Doesn't Censor, It Keeps Comedy Fresh	https://www.youtube.com/watch?v=ufz4W0puLPA	Not Restricted	Big Think
Jerry Seinfeld On Diversity In Comedy: "Who Cares? Are You Making Us Laugh Or Are You Not?"	https://www.youtube.com/watch?v=EsEr6xNN8Hw	Not Restricted	BuzzFeedBrews

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
PragerU Video: If There Is No God Murder Isn't Wrong	https://www.youtube.com/watch?v=yrcQ_PtKVD4	Restricted	PragerU
Similar YouTube videos not restricted:			
Re: If There Is No God, Murder Isn't Wrong	https://www.youtube.com/watch?v=dkTLRTuINrA	Not Restricted	Positive Improvement
If There Is No God, Murder Isn't Wrong	https://www.youtube.com/watch?v=1yZFkl292CA	Not Restricted	Holy Koolaid
PragerU Video: The "Anti-Hate" Group That Is a Hate Group	https://www.youtube.com/watch?v=qNFNH0ImYdM	Restricted	PragerU
Similar YouTube videos not restricted:			
784: The Number Of Hate Groups In The US msnbc	https://www.youtube.com/watch?v=zFAUFXWkRTw	Not Restricted	MSNBC
President of the Southern Poverty Law Center Discusses Voter Suppression In Alabama	https://www.youtube.com/watch?v=oXm3gMedYSk	Not Restricted	TYT Investigates
Why Give To The Southern Poverty Law Center?	https://www.youtube.com/watch?v=j6vvNIUSxMA	Not Restricted	Southern Poverty Law Center
PragerU Video: What ISIS Wants	https://www.youtube.com/watch?v=v7f0bKIOwys	Restricted	PragerU
PragerU Video: What's Holding the Arab World Back?	https://www.youtube.com/watch?v=aAOzlinU94g	Restricted	PragerU
PragerU Video: Why Do People Become Islamic Extremists?	https://www.youtube.com/watch?v=-IchGuL501U	Restricted	PragerU
PragerU Video: Islamic Terror: What Muslim Americans Can Do	https://www.youtube.com/watch?v=WXXIhKELxEo	Restricted	PragerU
PragerU Video: Radical Islam: The Most Dangerous Ideology	https://www.youtube.com/watch?v=-LGzrYUGXdI	Restricted	PragerU
PragerU Video: Where Are the Moderate Muslims?	https://www.youtube.com/watch?v=Y9Enx4XxO1E	Restricted	PragerU
PragerU Video: Why Don't Feminists Fight for Muslim Women?	https://www.youtube.com/watch?v=wJkFQohIKNI	Restricted	PragerU
PragerU Video: Is Islam a Religion of Peace?	https://www.youtube.com/watch?v=5AkAGc5nOXw	Restricted	PragerU
PragerU Video: Born to Hate Jews	https://www.youtube.com/watch?v=xCQEmeGfFmY	Restricted	PragerU

1	VIDEO	LINK	STATUS (as of October 17)	CHANNEL
2	PragerU Video: Pakistan: Can Sharia and Freedom Coexist?	https://www.youtube.com/watch?v=nPG4H3XUX1Q	Restricted	PragerU
3	Similar YouTube videos not restricted:			
4	What Is Sufism And Can It Stop Radical Islam?	https://www.youtube.com/watch?v=P2FZUzEa74o	Not Restricted	NowThis World
5	Islam, the Quran, and the Five Pillars All Without a Flamewar: Crash Course World History	https://www.youtube.com/watch?v=Tpcbfxtldo8&t=3s	Not Restricted	CrashCourse
6	What is Sharia Law and its Principles? Dr. Jasser Auda	https://www.youtube.com/watch?v=odmySqc9Qa8&t=5s	Not Restricted	Let the Quran Speak
7	Sharia law debate creates fireworks on Q&A	https://www.youtube.com/watch?v=Xn6WKOJDzul	Not Restricted	ABC News (Australia)
8	Ayaan Hirsi Ali on Islam	https://www.youtube.com/watch?v=fe_cuzsmmHU	Not Restricted	Tvochannel
9	The failed struggle for democracy in the Arab world, and what's next	https://www.youtube.com/watch?v=DKdpnzVMWR4	Not Restricted	TEDx Talks
10				
11	PragerU Video: What's Wrong with E-Cigarettes?	https://www.youtube.com/watch?v=XW4duMgxelo	Restricted	PragerU
12	Similar YouTube videos not restricted:			
13	The Dirty Truth About E-Cigs	https://www.youtube.com/watch?v=jiUXXx6kPbk	Not Restricted	Seeker
14	Are E-Cigarettes Safe? Brit Lab	https://www.youtube.com/watch?v=110MI90LZQA	Not Restricted	BBC Earth Lab
15	Shocking News: E-Cigarettes Are Bad For You	https://www.youtube.com/watch?v=47Dt-IBPWZI	Not Restricted	ReviewTechUSA
16				
17	PragerU Video: Is the Death Penalty ever Moral?	https://www.youtube.com/watch?v=8dnVZibrV6g	Restricted	PragerU
18	Similar YouTube videos not restricted:			
19	The Death Penalty: Yea or Nay?	https://www.youtube.com/watch?v=yMFsBsqOQaU	Not Restricted	Hip Hughes
20	The Death Penalty Debate	https://www.youtube.com/watch?v=pqbpBYPQL0	Not Restricted	THNKR
21	Death Penalty: Last Week Tonight with John Oliver	https://www.youtube.com/watch?v=Kye2oX-b39E	Not Restricted	LastWeekTonight
22				
23				
24	PragerU Video: The Suicide of Europe	https://www.youtube.com/watch?v=stR5nWkq3LU	Restricted	PragerU
25	Similar YouTube videos not restricted:			
26				
27				
28				

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
Watch: "We do not have a migration problem in Europe", Amnesty tells Good Morning Europe	https://www.youtube.com/watch?v=LHX8ebhjR3s	Not Restricted	euronews (in English)
EU immigration rules - in 90 seconds - BBC News	https://www.youtube.com/watch?v=uQqmRkhuMWU	Not Restricted	BBC News
Europe's migration crisis	https://www.youtube.com/watch?v=QUs3ui9Fw7w	Not Restricted	euronews (in English)
Balkan countries pressured by EU over refugee migration route	https://www.youtube.com/watch?v=CSzMttdMA8s	Not Restricted	Al Jazeera English
PragerU Video: Are Humans More Valuable Than Animals?	https://www.youtube.com/watch?v=7JATJv8HIV8	Restricted	PragerU
Similar YouTube videos not restricted:			
Non-Human Animals: Crash Course Philosophy #42	https://www.youtube.com/watch?v=y3-BX-jN_Ac	Not Restricted	CrashCourse
Should Animals Have Human Rights?	https://www.youtube.com/watch?v=dkQ0QiEsS80	Not Restricted	BrainStuff – HowStuffWorks
PHILOSOPHY - Ethics: Killing Animals for Food	https://www.youtube.com/watch?v=3HAMk_ZYO7g	Not Restricted	Wireless Philosophy
PragerU Video: Why Did the Democratic South Become Republican?	https://www.youtube.com/watch?v=UiprVX4os2Y	Restricted	PragerU
Similar YouTube videos not restricted:			
How the Republican Party went from Lincoln to Trump	https://www.youtube.com/watch?v=s8VOM8ET1WU	Not Restricted	Vox
PragerU Video: Gender Identity: Why All the Confusion?	https://www.youtube.com/watch?v=yAAIFya89aw	Restricted	PragerU
Similar YouTube videos not restricted:			
Why is Gender Identity so Important?	https://www.youtube.com/watch?v=IFBU7h7fqLc	Not Restricted	TEDx Talks
What We Know About Gender Identity According to Science	https://www.youtube.com/watch?v=XMRIgaY6eVU	Not Restricted	Seeker
Theories of Gender: Crash Course Sociology	https://www.youtube.com/watch?v=CquRz_cceH8	Not Restricted	CrashCourse
PragerU Video: The Least Diverse Place in America	https://www.youtube.com/watch?v=y0HKgs-0zDY	Restricted	PragerU
PragerU Video: College Made Me a Conservative	https://www.youtube.com/watch?v=MVJXi6lXWyl	Restricted	PragerU

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
Similar YouTube videos not restricted:			
Liberals Are Stifling Intellectual Diversity On Campus	https://www.youtube.com/watch?v=nIF2gstvLAY	Not Restricted	IntelligenceSquared Debates
Students Love Socialism... But Can't Define What It Is	https://www.youtube.com/watch?v=YMxTEZ7JizI	Not Restricted	CampusReform
PragerU Video: Who's More Pro-Choice: Europe or America?	https://www.youtube.com/watch?v=IHrihwWJv8o	Restricted	PragerU
PragerU Video: The Most Important Question About Abortion	https://www.youtube.com/watch?v=AMwkQVpy98A	Restricted	PragerU
Similar YouTube videos not restricted:			
Abortion Rights Full Panel Discussion Oxford Union	https://www.youtube.com/watch?v=eag77II9gZw	Not Restricted	OxfordUnion
Aspen Baker: A better way to talk about abortion	https://www.youtube.com/watch?v=P5Mpo4JQZhw	Not Restricted	TED
Tomi Lahren Defends Abortion Rights	https://www.youtube.com/watch?v=l6kqdPr5ncU	Not Restricted	HuffPost
ProChoice America Ilyse Hogue at DNC 2016	https://www.youtube.com/watch?v=jmsCFrVvH9E	Not Restricted	Democratic National Convention
PragerU Video: Are 1 in 5 Women Raped at College?	https://www.youtube.com/watch?v=K0mzqL50I-w	Restricted	PragerU
Similar YouTube videos not restricted:			
Re-thinking Sexual Assault Prevention in High School and College	https://www.youtube.com/watch?v=dRuPFmo15Tk	Not Restricted	TEDx Talks
It's On Us Tanvi Jayaraman	https://www.youtube.com/watch?v=OeYd8x4Dlf8	Not Restricted	TEDx Talks
PragerU Video: Everyone Should Stand for the National Anthem	https://www.youtube.com/watch?v=EuymzkaPagM	Restricted	PragerU
Similar YouTube videos not restricted:			
What's The Case For Kneeling In Protest Of National Anthem?	https://www.youtube.com/watch?v=SV0mbDcXfLY	Not Restricted	The View
Opening Communication In Kneeling Debate	https://www.youtube.com/watch?v=tPNR-BZaJ8A	Not Restricted	The View
Beto O'Rourke on NFL Players Kneeling During the National Anthem	https://www.youtube.com/watch?v=SGWmh-maevk	Not Restricted	NowThis News

VIDEO	LINK	STATUS (as of October 17)	CHANNEL
Veterans Stand Behind Colin Kaepernick's National Anthem Protest	https://www.youtube.com/watch?v=or2IBotHhho	Not Restricted	MSNBC
Should NFL Owners Fire Players Who Sit Or Kneel In Protest During The National Anthem?	https://www.youtube.com/watch?v=D_Z2jgUNTQo	Not Restricted	CNBC
PragerU Video: How's Socialism Doing in Venezuela?	https://www.youtube.com/watch?v=CCldm3cM6zQ	Restricted	PragerU
Similar YouTube videos not restricted:			
The collapse of Venezuela, explained	https://www.youtube.com/watch?v=S1gUR8wM5vA	Not Restricted	Vox
Venezuela middle class crosses border for groceries	https://www.youtube.com/watch?v=KM92MgJydEE	Not Restricted	AP Archive
Venezuela's Oil, Bankruptcy and Cryptocurrency	https://www.youtube.com/watch?v=VWe7IVgHkd4	Not Restricted	VisualPolitik EN
Why is VENEZUELA a CATASTROPHY?	https://www.youtube.com/watch?v=0SP2cXoeOxY	Not Restricted	VisualPolitik EN
Venezuela: How long does it take to buy 8 basic goods?	https://www.youtube.com/watch?v=1CEmKe5mS0	Not Restricted	BBC News

20. As the video links provided in the chart show, Google/YouTube do not restrict or restrain content of preferred or favored speakers, even where the content is on subject matters similar or identical to that of the PragerU videos. Rather, as they admit, Google/YouTube are using unconstitutional restraints on free speech to restrict videos for ideological or anticompetitive reasons based on the identity, perspective, viewpoint, or competitive threat of the speaker

21. As of the date of filing of this lawsuit, Google/YouTube have provided no rational or reasonable lawful basis to restrict PragerU's content while allowing other users or YouTube's own content on the same topics to go unrestricted, including content that contains graphic violence, hate speech, profanity, or otherwise violates Defendants' regulations. And the fact that Google/YouTube privately own and operate YouTube does not grant them free license to discriminate against PragerU because of its religious or political identity or viewpoint, lie to the public and conceal their use of animus and anticompetitive algorithms and filtering tools to gain

1 an unfair competitive advantage to promote their own content or the viewpoints and content of
2 their preferred users and favored advertisers.

3 22. In short, Google/YouTube cannot have it both ways under California law: promise
4 and induce the public to use YouTube as a public forum for “freedom of expression” and
5 “viewpoint neutrality” in order to profit from and monetize free speech, and then proceed to
6 regulate and restrict that speech in any manner that violates the very definition of free speech and
7 free expression under California law through the use of discriminatory, deceptive, and bad faith
8 regulation of speech and content on YouTube.

9 23. Defendants’ unlawful regulation of speech directly contravenes the most
10 fundamental rules and principles that define the “freedom of expression,” “viewpoint neutrality,”
11 and “equality” that YouTube expressly promises the public. Google/YouTube’s arbitrary,
12 capricious, and discriminatory restraints on PragerU’s video content is illegal and a direct threat to
13 the rule of law, under both the California Constitution and the state’s antidiscrimination, and
14 consumer protection laws intended to protect the public from discrimination, unscrupulous,
15 anticompetitive, or fraudulent business practices, and the implied covenant of good faith and fair
16 dealing inherent in form contracts with consumers. Google/YouTube’s capricious, arbitrary, and
17 discriminatory use of content-based speech regulations to favor some speakers violates the Liberty
18 of Speech Clause under Article 1, Section 2 of the California Constitution (the “Liberty of Speech
19 Clause”), discriminates based on religious and political animus in violation of the Unruh Act,
20 constitutes unfair, unlawful, and fraudulent business practices under California’s Unfair
21 Competition Laws, and breaches the covenant of good faith and fair dealing under YouTube’s
22 own “Terms of Service” and “Community Guidelines.”

23 **III. PARTIES**

24 24. Plaintiff Prager University is a non-profit, 501(c)(3) tax exempt, educational
25 organization with its principal place of business in Sherman Oaks, California. PragerU was
26 founded by Dennis Prager, a radio talk show host, and Allen Estrin, a radio producer and
27 screenwriter. PragerU’s mission is to present to and educate members of the public about current
28 and historical issues and events of public interest and concern, with a focus on younger, student-

1 based audiences generally ranging from ages 13-35.

2 25. Defendants Google LLC and YouTube, LLC, a wholly owned subsidiary of Google
3 LLC, are for profit businesses and publicly held companies, whose principal places of business are
4 located in Mountain View, Santa Clara, California and San Bruno, Santa Clara, California,
5 respectively.

6 26. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of Defendants Does 1 through 25, inclusive, are presently unknown to Plaintiff, and for
8 that reason these defendants are sued by such fictitious names. Plaintiff is informed and believes
9 and thereon alleges that each of the Doe defendants is in some way legally responsible for the
10 violations of law and injuries and harm caused as alleged herein. If and when appropriate,
11 Plaintiff will seek leave of court to amend this complaint when the true names and capacities of
12 said defendants are known.

13 **IV. JURISDICTION AND VENUE**

14 27. Plaintiff re-alleges and incorporates paragraphs 1-26.

15 28. This Court has general jurisdiction over this matter under California Code of Civil
16 Procedure section 410. 10. Defendants transacted business and committed the acts complained of
17 within Santa Clara and Los Angeles Counties during the times referenced, the alleged violations of
18 law are all governed by California law, and the contracts, representations, and acts that form the
19 basis of the complaint were largely performed in California, including Santa Clara County.

20 29. All of the causes of action asserted in this case arise from or are related to the
21 claims governed exclusively by California law that were initially asserted in the federal action.
22 The district court, exercising its discretionary jurisdictional powers under 28 U.S.C. § 1367(a),
23 dismissed all of the California state law claims asserted in this case without prejudice to
24 “promote[] comity as it enables California courts to interpret questions of state law an
25 especially important consideration in the instant case because Plaintiff asserts a claim that
26 demands an analysis of the reach of Article I, section 2 of the California Constitution in the age of
27 social media and the Internet.” (Order at 26:12-18.)

28 30. Venue is proper in this judicial district, pursuant to California Code of Civil

1 Procedure § 395(a). Defendants reside and/or transact business in the County of Santa Clara, and
2 are within the jurisdiction of this Court for purposes of service of process. Furthermore,
3 Defendants' Terms of Service contain a venue clause requiring that this lawsuit be filed in a court
4 of competent jurisdiction located either within or with venue over Santa Clara County.

5 **V. FACTS COMMON TO ALL CLAIMS FOR RELIEF**

6 31. Plaintiff re-alleges and incorporates paragraphs 1-30.

7 **A. Prager University**

8 32. PragerU was founded in 2011, by radio talk show host Dennis Prager and radio
9 producer and screenwriter Allen Estrin. PragerU's mission is to present to and educate members
10 of the public about current and historical issues and events of public interest and concern, with an
11 emphasis on reaching younger, academic and student-based audiences.

12 33. PragerU seeks to provide usually, but not always, conservative viewpoints and
13 perspectives on public issues that it believes are often overlooked or ignored due to the dominance
14 of mainstream, liberal perspectives in higher education in the United States. PragerU considers
15 itself a resource for every American, and every person in the world who values liberty, and
16 promotes educational discourse on topics that help viewers to better understand and explain the
17 common values from the American conservative perspective.

18 34. The organization is not an academic institution and does not offer certifications or
19 diplomas. Instead, PragerU depends on charitable donations from the public to, among other
20 services, promote educational videos. The videos seek to take the best ideas from the best minds
21 and distill them down to short, focused discussions, usually lasting about five minutes. Producers
22 will also add graphics and animation in an attempt to create the persuasive, entertaining, and
23 educational-based video content that espouses viewpoints and perspectives based on conservative
24 values, including core values of freedom of speech, a free press, free markets and strong
25 protections of those values. Since its inception, PragerU has posted more than 250 of these videos
26 on YouTube.

27 **B. Google/YouTube**

28 35. YouTube was founded in 2005 in San Bruno, California and is now the largest

1 video-sharing website in the world. In 2006, Defendant Google bought YouTube for \$1.65 billion
2 and operates it as a Google subsidiary.

3 36. YouTube allows users to upload, view, rate, share, add to favorites, report,
4 comment on videos, and subscribe to other users. Available content includes video clips, TV
5 show clips, music videos, short and documentary films, audio recordings, movie trailers, live
6 streams, and other content such as video blogging, short original videos, and educational videos.
7 Most of the content on YouTube is uploaded by individuals, but media corporations including
8 CBS, the BBC, Vevo, and Hulu also offer some of their material via YouTube as part of the
9 YouTube partnership program. Unregistered users can only watch videos on the site, while
10 registered users are permitted to upload an unlimited number of videos and add comments to
11 videos.

12 37. Google/YouTube then monetize speakers' intellectual property and viewers'
13 interests by selling advertisements; some of those advertisements come from the speakers
14 themselves, who pay for their videos or channels to be "featured" or publicized. In addition,
15 YouTube offers subscriptions in which people pay ongoing fees to view videos on YouTube
16 without advertisements. In total, YouTube earned \$9 billion in revenue in 2015, and is estimated
17 to earn \$27 billion annually by 2020.

18 38. YouTube earns advertising revenue from Google AdSense, a program which
19 targets ads according to site content and audience. The vast majority of its videos are free to view,
20 but there are exceptions, including subscription-based premium channels, film rentals, as well as
21 YouTube Red, a subscription service offering ad-free access to the website and access to exclusive
22 content made in partnership with existing users. As of February 2017, there are more than 400
23 hours of content uploaded to YouTube each minute, and one billion hours of content are watched
24 on YouTube every day. As of August 2017, the website is ranked as the second-most popular site
25 in the world by Alexa Internet, a web traffic analysis company, and retains a virtual monopoly
26 power over the domestic and international internet video posting markets.

27 39. Young people, who are disproportionately affected by the imposition of "restricted
28 mode" on PragerU videos, are particularly drawn to YouTube. In an average month, eight out of

1 ten 18- to 49-year olds watch YouTube. Television watching time among that demographic
2 dropped, while it went up on YouTube by 74%. YouTube now reaches more of that demographic
3 than any broadcast or cable network. So-called “Millennials” watch two-thirds of all premium
4 online video content via YouTube, across all devices.

5 40. Defendants’ platform is now the world’s largest public forum for the expression
6 and exchange of ideas and speech contained in video-based formats. The YouTube internet
7 channel is used by over one billion users, or almost one third of total internet viewers, to express
8 ideas and exchange speech through the posting of videos by members of the public. YouTube is
9 now one of the top four visited websites globally (along with Facebook, Twitter and Google
10 Search). Eighty-five (85%) percent of the U.S. internet audience watches videos online and more
11 than 500 million hours of videos are watched on YouTube each day. More video content has been
12 uploaded to Google/YouTube by public users than that created by the major U.S. television
13 networks in 30 years.

14 **C. YouTube Was Built And Continues To Operate On A Lie**

15 41. Since acquiring YouTube, Google/YouTube operate the YouTube platform as the
16 largest and most profitable mechanism for monetizing free speech and freedom of expression in
17 video content in the world. Google/YouTube generates an estimated \$10 to 15 billion in revenue
18 annually by monetizing the video content of public users and viewers, like PragerU, who are
19 invited to post their video content on YouTube.

20 42. Google/YouTube built and operate YouTube for profit and commercial gain by
21 inviting the public to provide video content to the platform based on a promise of “freedom of
22 expression” for all. Defendants use this and other promises of content-neutrality to solicit and
23 induce members of the public to post video content to the platform that Google/YouTube then
24 seek to monetize for their own commercial gain and profit. Based on this business model,
25 YouTube has become and remains the largest forum for the general public to participate in video-
26 based expression and exchange of speech in the history of California, the United States, and the
27 world. The total number of people who currently use the YouTube service exceeds 1.3 billion
28 people and more than 30 million members of the general public visit the platform to view nearly 5

1 billion videos every single day².

2 43. By soliciting and inducing the public to upload video content under the guise of
3 “freedom of expression” and the use of content-neutral rules that do not take into account the
4 content creator or user’s identity, viewpoint, or topical interest, members of the public upload
5 more than four hundred (400) hours of videos to the platform every hour. The number of hours in
6 which people watch videos on YouTube is estimated to exceed 3.25 billion worldwide. Eighty-
7 five percent (85%) of the U.S. internet audience watches videos online and more than 500 million
8 hours of videos are watched on YouTube each day.

9 44. Today, YouTube is one of the top four most visited websites globally, (along with
10 Facebook, Twitter and Google’s search engine). At least one report estimates that 10,113
11 YouTube videos generated over 1 billion views and the average number of mobile YouTube views
12 is estimated to be about 1 billion per day. YouTube videos can be navigated in at least 76
13 different languages..

14 45. YouTube’s success depends on members of the public, users and content creators
15 who are invited and induced to post and view videos based on Google/YouTube’s “core” promise
16 that the platform functions as public forum for the public to engage in “freedom of expression,” a
17 place where everyone’s voice is heard, and where video content is treated equally for all under
18 neutral content-based rules that do not discriminate based on topic, viewpoint, or identity.

19 46. YouTube’s Mission Statement declares that YouTube is a public forum for video
20 speech based on “four essential freedoms that define” the platform:

- 21 1. **Freedom of Expression:** We believe people should be able to speak freely,
22 share opinions, foster open dialogue, and that creative freedom leads to new
23 voices, formats and possibilities.
- 24 2. **Freedom of Information:** We believe everyone should have easy, open
25 access to information and that video is a powerful force for education,
26 building understanding, and documenting world events, big and small.
- 27 3. **Freedom of Opportunity:** We believe everyone should have a chance to
be discovered, build a business and succeed on their own terms, and that
people—not gatekeepers—decide what’s popular.
4. **Freedom to Belong:** We believe everyone should be able to find
communities of support, break down barriers, transcend borders and come

28 ² <https://merchdope.com/youtube-stats/>

1 together around shared interests and passions.

2 47. Google/YouTube represent to members of Congress the same thing they tell the
3 general public: YouTube is designated and operated as a “public forum” where the public is
4 invited to engage in free speech and freedom of expression through video content. On January 26,
5 2018, YouTube’s Assistant General Counsel, Juniper Downs, testified to members of the U.S.
6 Senate Commerce Committee **that YouTube is designated and operated as a “Public Forum”**
7 **for speech subject to appropriate, neutral content regulations.** [See [https://www.c-](https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism)
8 [span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism](https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism) and
9 [https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices)
10 [filtering-practices.](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices)]³

11 48. Consistent with their express “mission [] to organize the world’s information and
12 make it universally accessible and useful,” Google/YouTube invite the public, including original
13 content creators, viewers, and advertisers large and small, to connect with, inform, and inspire
14 others across the globe by using YouTube as a distribution platform for freedom of expression
15 through videos. And, YouTube claims to be the largest public forum for video-based speech in
16 California, the United States, and the world, where, based on the number of views, likes, and
17 subscriptions to uploaded video content, new celebrities emerge and new ideas are popularized. In
18 so doing, YouTube emphatically declares that its “mission” is to “give people a voice” in a “place
19 to express yourself” and in a “community where everyone’s voice can be heard.” Defendants
20 further brag that YouTube is “one of the largest and most diverse collections of self-expression in
21 history,” giving “people opportunities to share their voice and talent no matter where they are from
22 or what their age or point of view.” See, e.g., <https://youtube.googleblog.com/> (YouTube Official
23 Blog: Broadcast Yourself). And all of these disclosures, including its Community Guidelines and
24 promises of “neutral” content filtering “*are also incorporated . . . by reference*” into YouTube’s
25 Terms of Service.

26 49. These and many other representations made by Defendants are outright falsehoods.
27

28 ³ See ¶10, above, for excerpt of Ms. Downs’ testimony.

1 In regulating speech on a social media platform unequivocally designated and characterized by
2 Google/YouTube as one of the world's largest public forums for free speech, YouTube nefariously
3 uses a series of broad, vague, subjective, and overlapping policies and criteria to restrict speech as
4 they see fit in their absolute, unfettered discretion. Consequently, YouTube is not operated as a
5 place for the public to engage in freedom of expression with the public as advertised by
6 Defendants, but a private profit center in which Google/YouTube monetize public speech by
7 exercising unfettered discretion to censor or restrict any video content uploaded by the public for
8 any reason or no reason, simply because such restrictions serve to further Defendants' animus or
9 bias toward the viewpoint or identity of their users, or mere financial gain.

10 50. As Defendants admit, therefore, the designation of the platform as a public forum
11 for freedom of expression subject only to viewpoint-neutral policies and filtering protocols is
12 false. The regulation of speech on YouTube by Defendants is a sham and pure pretext to
13 unilaterally, capriciously, and arbitrarily restrict or censor public speech because Defendants
14 dislike and disagree, for any reason or no reason, with the public user's political or religious
15 identity, viewpoint, or the topic of the video.

16 **D. Google/YouTube Compete With Third Party Users On YouTube**

17 51. "The company has partnered with its top content creators who wanted to charge a
18 subscription rental or purchase fees for their content and made their uploaded content as paid
19 content which requires users to pay for a subscription or purchase fees to access the content of the
20 channel." Furthermore, YouTube partners with "affiliates" whose "related products"
21 advertisements are placed under some videos on YouTube. These products link to the affiliate
22 partners which pays commission to YouTube if you buy their products⁴.

23 52. In recent years, Google/YouTube have expanded their business from operating
24 YouTube only as a hosting platform for third party users to a production and media company that
25 produces its own content or partners with other large video, T.V., and film producers, including
26 Bill Maher, major sports teams, and large entertainment networks and companies, including HBO,

27
28 ⁴ <https://www.feedough.com/youtube-business-model-how-does-youtube-make-money/>

1 Fox, Public Television, NBA, ABC, and CBS, to name a few.

2 53. As other large global social media sites, including Facebook, have concluded,
3 Google/YouTube understand that the YouTube platform has reached its saturation point with
4 monetizing the content of third party users. Consequently it has decided to compete directly with
5 third party content providers like PragerU. Indeed, in addition to its own video channels on
6 YouTube, YouTube has entered the digital TV market trying to induce consumers to purchase its
7 TV and entertainment services from Defendants directly by advertising and offering a product
8 called YouTube TV.

9 54. But Google/YouTube do so unfairly and in a manner that gives them a competitive
10 advantage, by among other things, using their filtering tools and criteria to restrict the access and
11 reach of the smaller third party users it hosts on YouTube. Specifically, Google/YouTube do not
12 meaningfully subject their own content and that of their partners and preferred users to the same
13 regulations that they applies to PragerU and other members of the general public.

14 55. Thus, under the pretext of making the site safe for their users, Google/YouTube
15 arbitrarily, capriciously, and deceptively restrict access and reach to speech and content of their
16 competitors, like PragerU, while allowing their own content to avoid those same restrictions and
17 restraints, even where that content violates their own guidelines. In so doing, Google/YouTube
18 effectively clear space on the platform for their own content to better reach the sites' 2 billion
19 users by censoring the content of their competitors.

20 **E. Google/YouTube's Restraints And Access Restrictions On PragerU Videos**

21 56. Defendants' unconstitutional, discriminatory, deceptive, and unlawful censorship
22 practices arise from and are based on two filtering and censorship practices dubbed by
23 Google/YouTube as "Restricted Mode" and Advertising Restriction Policies.

24 **1. Restricted Mode**

25 57. In 2010, Google/YouTube created and introduced "Restricted Mode." According
26 to Defendants, Restricted Mode is a viewpoint and identity neutral content-based restriction
27 intended to limit viewer access to video content that discusses "mature" topics by younger,
28 sensitive audiences.

1 58. According to Google/YouTube Restricted Mode is intended “to help institutions
2 like schools as well as people who wanted to better control the content they see on YouTube with
3 an option to choose an intentionally limited YouTube experience.” Viewers can choose to turn
4 Restricted Mode on for their personal accounts, but it may also be turned on by system
5 administrators to restrict all access on computer networks to all users and machines, including
6 viewers who seek to access video content in public libraries, schools, and other institutions or
7 work places. When a network administrator or an individual viewer activates Restricted Mode,
8 the name, creator or subject of the video, as well as its content, comments about the video, or any
9 other information related to the video are blocked as if the video did not exists on the YouTube
10 Platform.

11 59. According to Alice Wu, a Senior Manager of Trust & Safety at YouTube, LLC,
12 Defendants estimate that about 1.5 percent of YouTube’s daily views (or approximately 75 million
13 of the nearly 5 billion views every single day) come from people who have Restricted Mode
14 turned on. *See* federal action Declaration of Alice Wu in Support of Defendants’ Opposition to
15 Motion for Preliminary Injunction (“Wu Dec.”) at Dkt. #38 at ¶22. Google/YouTube assert,
16 however, that Restricted Mode is not “about numbers,” but “about the principle of anyone having
17 access to important content and different points of view.”

18 60. Google/YouTube restrict content in Restricted Mode based on certain “Restricted
19 Mode Guidelines.” Accordingly, the Guidelines ensure that videos containing potentially mature
20 content will not be shown to viewers who have Restricted Mode turned on. Google/YouTube use
21 five criteria for determining whether such content warrants exclusion from Restricted Mode:
22 (1) Talking about drug use or abuse, or drinking alcohol in videos; (2) Overly detailed
23 conversations about or depictions of sex or sexual activity; (3) Graphic descriptions of violence,
24 violent acts, natural disasters and tragedies, or even violence in the news; (4) Videos that cover
25 specific details about events related to terrorism, war, crime, and political conflicts that resulted in
26 death or serious injury, even if no graphic imagery is shown; (5) Inappropriate language, including
27 profanity; and (6) Video content that is gratuitously incendiary, inflammatory, or demeaning
28 towards an individual or group. Google/YouTube concedes, as it must, that there is a risk that

1 some important content could be lost if these rules and criteria are applied without context.

2 61. According to Google/YouTube, Restricted Mode operates to restrict access to
3 videos in two ways. First, Defendants use an automated filtering algorithm that examines certain
4 “signals” like the video’s metadata, title, and the language used in the video. The algorithm looks
5 for certain “signals” to determine if rules or criteria are violated so as to warrant segregation in
6 Restricted Mode. Second, a video can be subject to Restricted Mode filtering if it is “flagged” as
7 “inappropriate” by public viewers, or what Google/YouTube call the “community.” According to
8 Google/YouTube, however, a video is not automatically filtered into Restricted Mode if it is
9 flagged by the community. Instead, flagged videos are reviewed by a “team” for “violations of
10 our Community Guidelines.”

11 62. When it comes to content-based restrictions that result from community flagging,
12 Google/YouTube’s “Community Guidelines” are not a beacon of clarity. Rather, the Guidelines
13 provide what Google/YouTube describe as “some common-sense rules that’ll help you steer clear
14 of trouble.” The rules contain seven criteria: (1) “Nudity or sexual content” that contains
15 pornography or sexually explicit content; (2) “Violent or graphic content” intended to shock,
16 sensationalize, or be disrespectful; (3) “Harmful or dangerous content” that encourages others to
17 do things that might hurt someone, including harmful or dangerous acts; (4) “Hateful Content”
18 that condones violence against individuals or groups based on race or ethnic origin, religion,
19 disability, gender, age, nationality, veteran status, or sexual orientation/gender identity, or whose
20 primary purpose is inciting hatred on the basis of these core characteristics; (5) “Copyright”
21 violations where the content was not made by or authorized for use by the user; (6) “Threats”
22 where content includes predatory behavior, stalking, threats, harassment, intimidation, invading
23 privacy, revealing other people’s personal information, and inciting others to commit violent acts
24 or to violate the Terms of Use; and (7) “Spam, misleading metadata, and scams” creating or
25 involving misleading descriptions, tags, titles, or thumbnails in order to increase views.
26 Defendants also discourage the posting of large amounts of untargeted, unwanted or repetitive
27 content. And video content that complies with the Community Guidelines, may, nevertheless, be
28 subject to access restrictions under Restricted Mode at Google/YouTube’s unfettered discretion.

63. Restricted Mode also operates in tandem with separate, more stringent “Age Based Restriction” filtering criteria intended to block all mature content to younger viewers under the age of 18. Age Based Restrictions provide Google/YouTube with the ability to protect younger, sensitive audiences from mature content without any need to employ Restricted Mode. When evaluating whether content is appropriate for all ages, Defendants restrict: (1) “Vulgar language” involving sexually explicit language or excessive profanity in the video or associated metadata; (2) Violence and disturbing imagery whether real, dramatized or fake violence that may not be suitable for all ages; (3) Nudity and sexually suggestive content containing nudity or dramatized sexual conduct may be age-restricted when the context is appropriately educational, documentary, scientific or artistic and content featuring individuals in minimal or revealing clothing may also be age-restricted if intended to be sexually provocative, but do not show explicit content.; and (4) Portrayal of harmful or dangerous activities involving content that intends to incite violence or encourage dangerous or illegal activities that have an inherent risk of serious physical harm or death.

64. As Defendants admit, Restricted Mode is entirely duplicative of Age Based Restrictions with one important exception. Age Based Restrictions block access to any viewer under the age of 18, while Restricted Mode blocks access to all viewers, regardless of the age or purported sensitivity of the viewer. Thus, Restricted Mode can and is utilized by Defendants to block access to content by all viewers, regardless of age or sensitivity, even where the content fully complies with YouTube’s Community Guidelines or its Age Based Restriction Criteria.

65. That is precisely how Defendants have utilized Restricted Mode as a pretext to unlawfully block all viewer access to PragerU’s videos. PragerU’s restricted videos are in full compliance with YouTube’s Age Based Restriction criteria and Community Guidelines. Indeed, all of the PragerU videos that are blocked by Defendants under Restricted Mode have never been Age Restricted nor found to be in violation of Community Guidelines.

66. Google/YouTube provide a limited appeal process for any users who believe that the application of age restriction filtering of the user’s video content is unwarranted or inappropriate. According to Google/YouTube, users have the ability to appeal an age-restriction.

1 If a video is age-restricted, the user technically can appeal the decision to an account Video
2 Manager page by clicking on the “Appeals Link” next to the age-restricted video. A YouTube
3 “team” will then review the user’s request and take further action if, in their subjective view,
4 further action is appropriate. As set for below, however, the use of discretionary criteria that
5 permits Defendants to restrict content, for any reason or no reason, even where it complies with all
6 applicable content-based regulations renders the appeal process meaningless and futile, because
7 Defendants’ subjective viewpoint, cultural or identity animus, not objective content compliance,
8 determines the final outcome.

9 67. Google/YouTube utilize Restricted Mode, not to further any legitimate interest in
10 protecting younger audiences from inappropriate content, but as a pretext for unlawfully
11 restricting and restraining PragerU’s speech through the use of broad, circular, vague, self-serving,
12 subjective, and meaningless criteria and procedures that grant Defendants unfettered discretion to
13 censor or restrain speech as they see fit, for any reason or no reason, whether lawful, irrational, or
14 not.

15 2. Advertising Restrictions

16 68. Google/YouTube also use similar vague, ambiguous, and arbitrary criteria as a
17 pretext to capriciously and discriminatorily restrict PragerU from monetizing its videos.
18 Google/YouTube impose these restrictions to justify anticompetitive and unlawful actions
19 intended to gain a competitive advantage for their own video content and to ensure that their
20 preferred users, content partners, and advertisers have an unfair competitive advantage in the
21 YouTube video market. By placing no restrictions on the monetization of their own video or that
22 of Google/YouTube’s preferred users and advertisers, Defendants seek to gain a competitive
23 advantage by restricting the financial reach of PragerU and other disfavored users, while ensuring
24 that their own video content (and those of their preferred users and partners) are not subject to the
25 same (or any) Advertising Restrictions.

26 69. Excerpt from Google’s “AdSense policy FAQs” - The purpose of AdSense policy
27 is to keep Google’s content and search networks safe and clean for our advertisers, users, and
28 publishers. We hope that all publishers participating in AdSense have a long and successful

1 partnership with Google. To understand why we need policies and the role they play in the ads
2 eco-system you can [watch this video](#). For that to happen, it's important that you familiarize
3 yourself with the AdSense program policies. It's important to make sure visitors to your pages are
4 not misled and avoid any deceptive implementation that may bring accidental clicks. For more
5 details, please check out our [ad implementation policies](#).

6 https://support.google.com/adsense/answer/3394713?hl=en&ref_topic=1250104

7 70. Not only is Google/YouTube's censorship not based on the content of the PragerU
8 videos but the "inappropriate" designation falsely and unfairly stigmatizes PragerU. It renders
9 prospective viewers ineligible to watch PragerU programming from public as well as private
10 workplace or home computer stations. It prevents access to educational content by students whose
11 computer use may be subject to parental controls intended to shield the student from truly
12 inappropriate material, not political or educational discourse of current or historical events. It
13 precludes PragerU from receiving any revenue from advertisements that would otherwise
14 accompany content not designated as "inappropriate." And it allows Google/YouTube's virtual
15 monopoly power over video posting and viewership market to manipulate, bully, and falsely
16 denigrate legitimate political and educational speakers by subjectively designating their speech as
17 "inappropriate," solely because Defendants do not like or agree with speakers' political identity or
18 point of view.

19 71. YouTube earns advertising revenue from Google AdSense, a program which
20 targets ads according to site content and audience. The vast majority of its videos are free to view,
21 but there are exceptions, including subscription-based premium channels, film rentals, as well as
22 YouTube Red, a subscription service offering ad-free access to the website and access to exclusive
23 content made in partnership with existing users.

24 72. These Advertising Restrictions violate California law on their face, as well as
25 applied to PragerU. As a result, Google/YouTube have prevented PragerU from monetizing or
26 obtaining sponsors for over 50 videos that have purportedly been restricted and demonetized not
27 because of content, but because of Defendants' animus against PragerU's religious and political
28 identity and viewpoints, including:

Currently restricted (as of October 2017):

PragerU Live: Alan Dershowitz

Ami Horowitz Do White Americans Have White Privilege?

What's Wrong with E-Cigarettes?

Why Isn't Communism as Hated as Nazism?

Where Are the Moderate Muslims?

Ami Horowitz How Is Muslim Immigration to Sweden Working Out?

The Least Diverse Place in America

Ami Horowitz What's Wrong with Socialism?

Dennis Prager Talks Politics With Gloria Alvarez and Felipe Moura Brasil

Why America Must Lead

What's Holding the Arab World Back?

What Should We Do About Guns?

Immigrants! Don't Vote for What You Fled

Is Islam a Religion of Peace?

Are the Police Racist?

Why Don't Feminists Fight for Muslim Women?

Why Did America Fight the Korean War?

Who's More Pro Choice: Europe or America?

What ISIS Wants

Are 1 in 5 Women Raped at College?

Islamic Terror: What Muslim Americans Can Do

Did Bush Lie About Iraq?

Who NOT to Vote For

Israel: The World's Most Moral Army

Radical Islam: The Most Dangerous Ideology

The Most Important Question About Abortion

Why Do People Become Islamic Extremists?

- 1 He Wants You
- 2 Israel's Legal Founding
- 3 Pakistan: Can Sharia and Freedom Coexist?
- 4 The World's Most Persecuted Minority: Christians
- 5 Why America's Military Must Be Strong
- 6 Born to Hate Jews
- 7 PragerU Live: David French
- 8 Ten Commandments: 6. Do Not Murder
- 9 Israel: The World's Most Moral Army
- 10 Why America Invade Iraq
- 11 Gender Identity: Why All the Confusion?
- 12 Gun Rights Are Women's Rights
- 13 **Demonetized (as of October 2017):**
- 14 PragerU: Short Videos. Big Ideas — posted by Noah? 082517
- 15 Fireside Chat with Dennis Prager (8/4/17)
- 16 Fireside Chat with Dennis Prager! (7/20/17)
- 17 Is the Death Penalty Ever Moral?
- 18 Fireside Chat With Dennis Prager! (6/20/17)
- 19 Fireside Chat With Dennis Prager! (7/13/17)
- 20 PragerU Live: Sidney Powell (6/22/17)
- 21 PragerU Live: David French (6/20/17)
- 22 Interview with Nigerian Senator Ben MurrayBruce
- 23 Interview with Jason Kenney (5/26/17)
- 24 Islam and Terrorism (5/23/17)
- 25 Why Isn't Communism as Hated as Nazism?
- 26 PragerU: PragerU Live: Dana Perino (4/6)
- 27 Fireside Chat With Dennis Prager & Special Guest Ben Shapiro! (3/16/17)
- 28 PragerU Live with Dr. Jordan Peterson (3/16/17)

1 Fireside Chat with Dennis Prager (3/9/17)
2 PragerU Live: We're interviewing "Day Without a Woman" protesters! (3/8/17)
3 PragerU Live: It's Day Without a Woman! (3/8/17)
4 Fireside Chat with Dennis Prager! (Jan. 26, 2017)
5 PragerU Live: Bret Stephens (2/3/17)
6 PragerU Live: Tom Shillue (2/14/17)
7 PragerU Live: Christina Hoff Sommers (3/6/17)
8 PragerU Live: Dave Rubin (10/21/16)
9 PragerU Live: Felipe Moura Brasil (2/20/17)
10 PragerU Live: Raymond Ibrahim (2/17/17)
11 PragerU Live: Dennis Prager and Adam Carolla!
12 What's Holding the Arab World Back?
13 Joe Everson's Artistic National Anthem
14 Is Islam a Religion of Peace?
15 Are The Police Racist?
16 Why Don't Feminists Fight for Muslim Women?
17 Who's More ProChoice:
18 Europe or America?
19 What ISIS Wants
20 Radical Islam: The Most Dangerous Ideology
21 The Most Important Question About Abortion
22 Why Do People Become Islamic Extremists?
23 Should America be the World's Policeman?
24 Don't Judge Blacks Differently
25 Israel's Legal Founding
26 Pakistan: Can Sharia and Freedom Coexist?
27 Ten Commandments: 6. Do Not Murder
28 Aznar on Europe, America and Israel

1 **3. Filtering Speech Under Restricted Mode And Advertising Restrictions**

2 73. Google/YouTube employ what they have falsely told the public and Congress are
3 viewpoint neutral filtering tools to determine whether or not to restrict access to video content
4 under Restricted Mode or Advertising Restrictions. Specifically, Defendants have developed and
5 use electronic artificial intelligence or “A.I.” algorithms to review and regulate video content.
6 Defendants represent that these algorithms are viewpoint- and identity-neutral and ensure that the
7 “same standards apply equally to all” when it comes to the content regulation of speech on
8 YouTube. Furthermore, Google/YouTube employees conduct “manual reviews” to supplement
9 the electronic filtering and regulation of video content.

10 74. But the evidence, including statements by employees familiar with both electronic
11 and manual filtering and regulation of speech that takes place on the YouTube platform, suggests
12 Defendants’ representations of neutral viewpoint and identity-based content regulation are false.
13 The A.I. and algorithmic filtering tools are embedded with code that regulates content based on
14 purely subjective, viewpoint, topic, and identity animus, and other unlawful criteria. Even before
15 October 2016, engineers began making changes to the code and operations of the algorithms and
16 filtering tools in order to ensure that Defendants could filter videos and regulate access to video
17 content based on political or religious animus, as well for financial or anticompetitive purposes.

18 75. Similarly, Defendants’ viewpoint bias, animus, and discrimination towards the user
19 identity or viewpoint is institutionally and culturally rampant in Google/YouTube’s work place
20 and employment practices. Among other things, Defendants operate and administer Restricted
21 Mode through employees, including engineers and content reviewers, who operate in what has
22 been widely reported and acknowledged as a dysfunctional work environment.

23 76. Internal emails by and between Defendants’ employees show that many employees
24 are routinely subjected to harassment, threats, black listing, discipline, and hazing based on their
25 political or religious viewpoints and identity. The dysfunction and viewpoint bias emanates from
26 and is enforced at the highest ranks of Defendants’ upper management, and drives the actions of
27 employee supervisors, co-workers, third party affiliates, and advertisers.

28 77. Consequently, even when manual employee reviews of video content are used to

1 check and audit restrictions on content based on the electronic filtering algorithms, Defendants use
2 Restricted Mode and other discretionary and vague content-based restriction criteria to restrict
3 access to PragerU videos under vague and undefined terms such as “mature” or “sensitive” for
4 certain audiences solely because the video discusses or mentions a topic or historical event
5 involving war, the holocaust, or some other historical event. The result is censorship, restraint of
6 speech, and discrimination based, not on content that might violate a narrow, neutral, objective,
7 and specifically verifiable criteria that furthers a compelling and legitimate public interest, but on
8 Defendants’ animus or dislike for the identity or viewpoint of the speaker.

9 78. Defendants also admit that decisions to restrict access to videos are routinely made
10 or influenced by third party NGO affiliates and advertisers who dislike the political or religious
11 identity or view point of the user. According to Google/YouTube, “YouTube receives significant
12 pressure from governments and social interest groups around the world to remove or restrict
13 access to content that those groups find harmful, dangerous, or offensive. For example, Germany’s
14 *Netzwerkdurchsetzungsgesetz* (network enforcement law or NetzDG) requires any internet
15 platform with more than 2 million users to implement more efficient ways to report and delete
16 potentially illegal content, such as slander and hate speech. Platforms that fail to remove such
17 content within 24 hours (or within 7 days for more legally complex content), will be subject to
18 fines of up to 50 million euros.” *See* Wu Dec. at ¶14. These groups constantly pressure
19 Defendants to apply access restriction criteria to users whose political or religious view point does
20 not comport with that of an advertiser or third party NGO.

21 **F. Restricted Mode Results In Arbitrary, Capricious And Discriminatory**
22 **Restraint Of Speech**

23 79. Defendants’ restriction practices and conduct result in the arbitrary and capricious
24 regulation and censorship of speech. PragerU’s compliant educational videos are restricted
25 because of the identity, viewpoint, topic, or perspective of the speaker not because there is
26 anything objectively “inappropriate” about the content expressing that perspective or reflecting
27 that identity. As a result, Google/YouTube use Restricted Mode to pick favorites. Favored users
28 are permitted to upload content on similar or identical topics which are not restricted, even when

1 the video content contains obscenity, profanity, violence, or hate speech that violates Defendants’
2 rules and restriction regulations, while users who are identified with or post content reflecting less
3 favored perspectives are filtered and restrained.

4 80. Google/YouTube admit that they repeatedly make “mistakes in understanding
5 context and nuances when it assesses which videos to make available in Restricted Mode.” And
6 on May 19, 2017, Google/YouTube admitted that the Restricted Mode “feature isn’t working the
7 way it should and we’re going to fix it.” For instance, Google/YouTube admit that it got “it
8 wrong” when they censored videos like Ash Hardell’s “Her Vows,” Calum McSwiggan’s
9 “Coming Out To Grandma,” Jono and Ben’s “Woman interrupted during BBC interview,” and
10 Tegan and Sara’s “BWU [OFFICIAL MUSIC VIDEO].”

11 81. In response to growing criticism of arbitrary and capricious censorship decisions,
12 Google/YouTube have told the public that they “must and will do a better job” in determining
13 which videos should be segregated and censored from Restricted Mode. And, because of the
14 subjective nature of their review criteria, Google/YouTube concede that even though videos don’t
15 violate policies, the video may still be restricted. But even if, as Google/YouTube claim, the
16 improper filtering and censorship of speech caused by Restricted Mode and Advertising
17 Restrictions is the result of mistakes and defects in the filtering tools or merely the product of
18 vague, subjective, overly broad, dysfunctional or poorly drafted guidelines regulating speech,
19 rather than on animus, the irreparable harm to users is no less arbitrary or illegal.

20 1. Google/YouTube Censor The LGBTQ Users

21 82. PragerU is not the first video blogger or “vlogger” to be discriminated against by
22 Google/YouTube because of the speaker’s perceived identity. On March 19, 2017,
23 Google/YouTube publicly admitted that they improperly censored videos using their restricted
24 mode filtering that were posted or produced by members of the LGBTQ community based on the
25 identity and orientation of the speaker rather than the content of the video. In response to
26 complaints from the LGBTQ community and other civil rights critics, Google/YouTube removed
27 all restricted filtering on videos posted or produced by LGBTQ members and groups, and changed
28 their policy, filtering algorithm, and manual review policies to ensure that videos posted by

1 LGBTQ vloggers were not being censored solely because of the identity of the speaker.

2 83. Google/YouTube also admitted that they wrongly censored videos posted by
3 members of the LGBTQ community because of a purported engineering problem with filtering
4 tools that targeted video content from LGBTQ users or that users who discussed topics and
5 perspectives on LGBTQ issues. Subsequent to that admission, Defendants agreed to investigate
6 the claims of LGBTQ users. Defendants dispatched a team of senior managers, including
7 YouTube's CEO Susan Wojcicki, to meet with LGBTQ representatives to consider revising their
8 policies and review protocols, correcting the filtering tools, and rewriting guidelines that "clarify
9 its position by specifically allowing personal accounts from victims of discrimination or violent
10 hate crimes, as long as they don't contain graphic language or content."

11 84. On April 27, 2017, Johanna Wright, VP of Product Management for YouTube,
12 stated that Google/YouTube wanted to "clarify that Restricted Mode should not filter out content
13 belonging to individuals or groups based on certain attributes like gender, gender identity, political
14 viewpoints, race, religion or sexual orientation." Wright further promised users that while
15 "Restricted Mode will never be perfect, [Google/YouTube] hope to build on [their] progress so far
16 to continue making [their] systems more accurate and the overall Restricted Mode experience
17 better over time."

18 2. Google/YouTube's Censorship Of PragerU's Videos

19 85. PragerU is another, of millions, of victims of Google/YouTube's restricted content
20 filtering practices. Unlike the LGBTQ victims, however, Google/YouTube admit that the
21 censorship of PragerU videos is not the result of an engineering problem or a loophole in
22 guidelines, but of intentional discrimination fueled by Defendants animus towards PragerU's
23 political identity, viewpoint, and target audience in the social media video market.

24 86. And rather than deny this animus, Google/YouTube seek to justify it by arguing
25 that they, and they alone, retain the unfettered and absolute power to censor any video content that
26 they deem "inappropriate," no matter how subjective, baseless, or arbitrary, because
27 Google/YouTube are private entities that own and operate the platform for their own financial gain
28 and interests. Google/YouTube believe that they are exempt or otherwise somehow immune from

1 California laws prohibiting ideologically driven content-based restrictions on free speech,
2 religious or political discrimination, false, unlawful, or unfair business practices, and even their
3 good faith obligations under their Guidelines and Terms of Service. Google/YouTube are
4 mistaken and their policies and conduct towards PragerU violate these laws on both on their face
5 and as specifically applied to PragerU.

6 87. On or about July 2016, PragerU discovered that Google/YouTube were restricting
7 user access to its videos under Restricted Mode. In response, PragerU raised the issue and began
8 discussions with Defendants. Since that time until the date of the filing of this lawsuit,
9 Google/YouTube have failed to offer any reasonable or consistent explanation for why the content
10 of those videos is subject to restricted content filtering.

11 88. Instead, Google/YouTube have repeatedly stated that Google/YouTube's automatic
12 filtering algorithm and their "review teams" are engaged in flagging unspecified or unidentified
13 video content as "inappropriate." This is telling because despite the existence of purported
14 guidelines and criteria, both the algorithm and review teams utilize Google/YouTube's censoring
15 criteria and guidelines that are hopelessly vague, undefined, ambiguous and broad and necessitate
16 that both the A.I. algorithms and manual review teams substitute unfettered subjective discretion
17 for objective criteria in deciding what is and is not appropriate for viewers. In so doing,
18 Google/YouTube are censoring PragerU's videos based not on any objective finding of
19 inappropriate material, but on the subjective perceptions and partisan biases embedded in
20 computer code and human beings as to what is politically correct and incorrect. In short,
21 Google/YouTube utilizes purely subjective and unspecific criteria for determining what is and is
22 not appropriate in order to justify censorship based not on content, but the political viewpoint and
23 perceived identity of the speaker.

24 89. On or about August 5, 2016, PragerU, following Google/YouTube's guidelines and
25 protocol contacted its Google/YouTube account manager to request that 16 of its videos be
26 removed from the restricted mode content list and be made available to all viewers, including
27 those who utilize Restricted Mode settings. For over one year, PragerU worked patiently and
28 cooperatively to try to resolve the censorship issues that comprise this lawsuit. In response,

1 Google/YouTube provided vague, misleading, confusing, and often contradictory information that
2 not only has prevented resolution of the issues, but constitutes further evidence and indicia that
3 their restricted mode filtering applied to PragerU is based on Defendants' intentional
4 discrimination and animus towards users and speakers whose political identity and viewpoints do
5 not comport with those of Google/YouTube.

6 90. On August 5, 2017, Google/YouTube responded by email saying that "Our Product
7 Specialist reviewed this, and at this time the videos are not safe enough for Restricted Mode so
8 they will remain as is and were correctly classified." In that email correspondence,
9 Google/YouTube admitted that they "aim to apply the same standards to everyone and we don't
10 censor anyone." Google/YouTube informed PragerU that they were "more than happy to fix
11 anything for you which might have been an error from our end."

12 91. On September 21, 2017, PragerU followed up and requested information about
13 what "specific actions" it could take to remove what was at the time a total of 21 videos on the
14 restricted content list.

15 92. On that same day, Google/YouTube responded: "As mentioned in the previous
16 emails, at this time, your videos aren't appropriate for the younger audiences and hence they're
17 not appearing in the restricted mode search results. I'd recommend you to go through our
18 Community Guidelines and align them with your content to see where it has violated."

19 93. Google/YouTube's response that they would not change the age restriction on all
20 21 restricted PragerU videos was patently arbitrary, discriminatory, and an obvious pretext to
21 justify illegally discriminating against PragerU because of its conservative political perspective
22 and identity. As is clear from a review of each of those videos (available by hyper link in the
23 Table embedded at paragraph 16, *supra*), the videos are "aligned" with the Community Guidelines
24 and do not contain any actual content that could reasonably be construed as objectively
25 inappropriate for younger or "more sensitive" audiences so as to justify restricting viewer access.

26 94. Nonetheless, on October 19, 2016, PragerU in good faith followed up with
27 Google/YouTube to advise Google/YouTube of the obvious: "after months of trying to get our
28 videos removed from Restricted Mode (or at least get a clear explanation of what we can change

1 to remove them), PragerU decided that its only recourse was to make this issue public.” PragerU
2 went on “to once again ask that YouTube unrestrict the 16 videos currently in Restricted Mode.”
3 Furthermore, in compliance with the Google/YouTube appeals process, PragerU also requested
4 “an explanation for why” certain videos were now “unrestricted,” including: “Why Are There Still
5 Palestinian Refugees?”, “Are 1 in 5 Women Raped at College?”, “Is America Racist?”, “Don’t
6 Judge Blacks Differently,” and “Commandment 6: Do Not Murder.”

7 95. On November 4, 2016, Google/YouTube responded: “The team is still
8 investigating the issue and it’s taking longer than usual. I have requested the team to expedite the
9 process and resolve as soon as possible.”

10 96. Then, on November 10, 2016, Google/YouTube responded only that “[a]t this time
11 the videos have been algorithmically included in Restricted Mode and no manual action was
12 needed.”

13 97. On December 5, 2016, PragerU sent a new request to appeal a removed video by a
14 pro-Israeli Muslim activist entitled “Born to Hate Jews,” that discussed how best to resist hatred
15 and anti-Semitism. Incredibly, Google/YouTube restricted the video as “hate speech.” Indeed,
16 the video was anything but. In fact, it contained a thoughtful and important discussion of the
17 origins and remedies for combatting hate speech by a Muslim man who supported the right of
18 Israel to exist. Consequently, PragerU requested that the content restrictions be removed and that
19 the failure to do so “is de facto censorship” that “will prevent hundreds of thousands, or millions
20 of people from hearing its valuable message.”

21 98. Over the next year, multiple communications occurred between PragerU and
22 Google/YouTube about the restriction of PragerU videos. During that period, PragerU was seeing
23 more and more evidence that its videos were being restricted not for content, but for the political
24 viewpoint or identity of the speaker.

25 99. In communications beginning on or about July 31, 2017, Google/YouTube
26 conceded that they could not tell whether the PragerU videos had been restricted after a manual
27 review or were censored only by the automated algorithm. Among other things, at
28 Google/YouTube’s request, PragerU provided Defendants with a list of PragerU videos that had

1 been restricted and a comparative list of videos that discussed the same topics but from liberal or
2 left wing perspectives that were not restricted. Google/YouTube sent the comparative list of
3 videos to a team for manual review.

4 100. On August 23, 2017, Max Pappas, a public policy staffer for Google/YouTube,
5 notified PragerU that YouTube was rolling out some changes to its restricted mode filtering
6 process but noted that the planned changes “should have no impact on your channel, and I double
7 checked on that, but if they inadvertently do, let me know so I can help with any appeal.” In
8 response, PragerU informed Google/YouTube that the “policies” were still impacting its content
9 and the number of restricted videos had actually increased to 34.

10 101. Google/YouTube then wanted to know if, in addition to restricting content,
11 PragerU videos were also being “demonitized” [sic] and prevented from running ads under the
12 Advertising Restrictions.

13 102. As alleged above , PragerU responded with a list of over 50 videos that had either
14 or both been restricted as to content and demonetized.

15 103. On October 12, 2017, Google/YouTube admitted that the manual reviews they
16 conducted on some of these videos were in fact “human reviews,” leaving little doubt that the
17 restrictions and demonetization of PragerU videos were not merely the result of an automated
18 algorithm error. But Google/YouTube declined to provide any explanation for why the videos
19 were restricted or demonetized because they purportedly “can’t share more details about our
20 review process, as doing so could benefit channels that do not play by the rules (those who game
21 the system).”

22 104. This practice of arbitrary and capricious censorship and restriction of speech
23 continues to this day against PragerU. And in October, 2017, Google/YouTube went so far as to
24 retaliate against PragerU by discontinuing PragerU’s ad grants account for over six days. When
25 PragerU requested that Google/YouTube reconsider, Google/YouTube responded: “No
26 chance.” Then, with an inconsistent and changed explanation, Defendants reinstated PragerU’s ad
27 grants account but continued to restrict, demonetize, and/or change restricted mode classifications
28 of PragerU videos at their whim.

1 105. Even when Google/YouTube attempt to provide an explanation for why they are
2 restricting PragerU content, the explanations are vague and illogical pretexts that further confirm
3 the arbitrary and capricious nature of the censorship. By way of example only, Google/YouTube
4 informed PragerU that the videos “Why Isn’t Communism as Hated as Nazism?” and “What’s
5 Holding the Arab World Back?” were placed in Restricted Mode because they purportedly
6 discussed “hate and genocide” and “terrorism and genocide,” respectively. No further explanation
7 as to what language constituted an inappropriate discussion of “hate and genocide” or “terrorism
8 and genocide” was given. But to the extent that Google/YouTube’s policy is to restrict all videos
9 that mention the words “hate,” “terrorism,” or “genocide,” or any video that mentions those topics,
10 then Google/YouTube need to explain why thousands of videos that use or mention those terms
11 are not also restricted.

12 106. Furthermore, a review of those two videos (listed with URL addresses in the
13 Comparative Table at paragraph 19 *supra*) shows that Google/YouTube’s explanation for
14 restricting them is either false and misleading or is based on their discriminatory animus towards
15 PragerU. Once Again, each of those videos discusses topics in the same manner and using the
16 same language and educational format as other videos that are not restricted. Indeed, the only
17 discernible difference between the language and the format of the censored videos and non-
18 censored videos is the political viewpoint of the speaker: the former provides a conservative
19 political perspective on the issues while the latter uses those terms to provide a liberal bent.

20 107. Finally, PragerU is informed and believes that content from its restricted videos has
21 been copied and used by other speakers to post videos that are not restricted by Google/YouTube.
22 Specifically, PragerU is informed and believes that content from the following videos that it has
23 produced and uploaded to YouTube and that Google/YouTube has subsequently restricted, is no
24 longer restricted after it was copied and posted by other users or vloggers:

25 Why Don't Feminists Fight For Muslim Women?
26 https://www.youtube.com/watch?v=c_qV7ya03sU

27 The Least Diverse Place in America
28 <https://www.youtube.com/watch?v=mO-CrOvepU0>

1 Why America Must Lead
https://www.youtube.com/watch?v=IreFjN_J-l0
2
3 What's Holding the Arab World Back?
https://www.youtube.com/watch?v=04UExojtpN0
4
5 6th Commandment: Do Not Murder
https://www.youtube.com/watch?v=rbTvXX3Csq8
6
7 The World's Most Persecuted Minority: Christians
https://www.youtube.com/watch?v=GHBu2aevyak
8
9 Is Islam a Religion of Peace?
https://www.youtube.com/watch?v=B-8f-FjLwRs
10
11 Immigrants! Don't Vote for What You Fled
https://www.youtube.com/watch?v=szwhSdd3Dno
12
13 Who NOT to Vote For
https://www.youtube.com/watch?v=Lnub5IDKUHC
14
15 Are 1 in 5 Women Raped at College?
https://www.youtube.com/watch?v=-HEe6JFRJn0

16 108. Consequently, identical content exists on the YouTube platform in both restricted
17 and unrestricted mode, the only difference being that the restricted video created and posted by
18 PragerU is permitted to run unrestricted merely because the copycat video was posted by other
19 users.

20 109. Unable to get a clear and consistent explanation of why certain videos were
21 classified from Google/YouTube, PragerU undertook an extensive comparative analysis of its
22 videos that were restricted and those on similar topics by different speakers that were not
23 restricted⁵. As of the date of filing of this lawsuit, the comparative analysis set forth in the chart in
24 paragraph 19, demonstrates that there is no rational, reasonable, or content-neutral basis to
25 distinguish between PragerU's restricted videos and the unrestricted video content of other users.

26 110. Indeed, as the table shows, Google/YouTube does not restrict video content
27 containing hate speech, graphic violence, profanity, or fake news and click bait, but restrict
28 PragerU videos because they address historical and political topics like the conflicts in the Middle

⁵ This chart was accurate as of October 22, 2018, however, due to the inconsistent application of Restricted Mode status, some of these videos may have become either restricted or non-restricted since the time of review.

1 East, the Holocaust, the Korean war, or free speech. Even a cursory comparison of the content
2 and subject matter of the censored PragerU videos with uncensored videos discussing the same
3 issues by speakers and channels like Crash Course, NowThis, AJ+ (Al Jazeera), BuzzFeed, Bill
4 Maher, TedTalkx, the History Channel, and many others, some of which contain profanity and
5 graphic depictions of mature content, leaves little doubt that Google/YouTube are not restricting
6 PragerU's videos because of noncompliance with any guidelines or terms of use, but are
7 discriminating against and censoring PragerU because of its political identity or viewpoint *not* the
8 content of its speech.

9 111. When PragerU's restricted videos are compared with other unrestricted videos
10 discussing the same topics, the otherwise compliant PragerU videos are restricted for no reason,
11 while content posted by more favored users is not, even in cases where the content contains
12 obscenity, profanity, violence, potential threats to national security, or other blatant violations of
13 Defendants' restriction criteria and standards. And what is further perplexing is that
14 Google/YouTube continually fail to filter content that contains outright hate speech,
15 discrimination, graphic violence, and profanity. Among many examples, Google/YouTube do not
16 restrict viewer access to mature video content entitled "Is it OK to punch a Nazi?" and "How to
17 punch a Nazi." These videos contain video content showing the vicious assault and battery of a
18 person while speaking to news reporters followed by commentators saying that violence is a
19 legitimate and necessary response to persons who hold contrarian viewpoints, including
20 viewpoints that many of us disagree with or find "offensive" to our values.

21 **G. Google/YouTube's Restrictions On Access And Monetization Are Arbitrary**
22 **Capricious, Discriminatory, And Harmful To PragerU And Other Public**
Users

23 112. Despite telling the public that Google/YouTube "products are platforms for free
24 expression," no such good faith treatment has been afforded PragerU. PragerU has endeavored
25 with patience and civility to navigate the red tape process for removing restricted filtering.
26 PragerU has fully complied with Google/YouTube's demands that PragerU formally seek
27 reconsideration of the "inappropriate" designation of its videos.

28 113. As set forth above, PragerU provided Google/YouTube with specific examples of

1 its videos along with comparisons of other similar material that do not share an inappropriate
2 designation from other producers. At this time, at least 80 PragerU videos continue to be censored
3 by restricted mode filtering. And when it requested that Google/YouTube treat these and other
4 videos in the same manner as those from other vloggers, including those of LGBTQ vloggers,
5 Google/YouTube refused, on the pretextual ground that manual reviewers had determined that
6 educational content ranging from the legal creation of Israel and the history of the Korean War to
7 the idea of diversity of thought on college campuses contained “inappropriate content.”

8 114. That finding is absurd, arbitrary, capricious, and devoid of any rational basis.
9 When compared with the litany of unrestricted videos posted by other speakers that contain similar
10 or identical content and differ only in the perspective or identity of the speaker,
11 Google/YouTube’s censorship of PragerU videos smacks of discrimination and animus arising
12 solely from the identity and perspective of the speakers, some of whom are identified with and
13 espouse views and analysis that are considered to be “conservative” on the American political
14 spectrum.

15 115. Not only is Google/YouTube’s censorship not based on the content of the PragerU
16 videos, but the “inappropriate” designation falsely and unfairly stigmatizes PragerU. It renders
17 prospective viewers ineligible to watch PragerU programming from public as well as private
18 workplace or home computer stations. It prevents access to educational content by students whose
19 computer use may be subject to parental controls intended to shield the student from truly
20 inappropriate material, not political or educational discourse of current or historical events. It
21 precludes PragerU from receiving any revenue from advertisements that would otherwise
22 accompany content not designated as “inappropriate.” And it allows Google/YouTube’s virtual
23 monopoly power over video posting and viewership market to manipulate, bully, and falsely
24 denigrate legitimate political and educational speakers by subjectively designating their speech as
25 “inappropriate,” solely because Defendants do not like or agree with speakers’ political identity or
26 point of view.

27 116. Google/YouTube also use Restricted Mode and Advertising Restrictions to gain an
28 unfair competitive advantage over smaller content providers and users who compete directly with

1 Defendants' own video content or that created and posted in partnership with other global and
2 mainstream media or preferred video content providers. Among other things, Restricted Mode
3 blocks viewer access to PragerU's videos among its target audiences, younger persons and
4 students between ages 13 and 35. A disproportionate number of these people do not control or
5 have the ability to turn off Restricted Mode because they do not control their computer networks at
6 their academic institutions, libraries or their standalone computers. And, Google/YouTube
7 Advertising Restrictions prohibit PragerU from monetizing their videos with advertisers, while
8 Defendants monetize and reap untold amounts of ad revenues by allowing preferred users and
9 partners to monetize similar content.

10 117. Such a censorship regime cannot pass muster under California law. Among other
11 things, it provides Google/YouTube with unfettered and unbridled discretion to impose their own
12 political views and values upon speakers without any objective criteria for evaluating what is and
13 is not appropriate and thereby censors speech based on animus towards the speaker's political
14 viewpoint rather than the appropriateness of the content of the video. It also constitutes
15 intentional discrimination by Google/YouTube based on the religious, political, or sexual
16 orientation beliefs of the speaker. And it allows Defendants unfettered authority to regulate,
17 restrain, and censor speech as an unfair, unlawful and deceptive business practice designed to
18 inflict harm on their competitors and promote their own video content at the expense of the
19 smaller third party users on whose backs the YouTube platform was built. It also violates the
20 warranty of good faith and fair dealing implied in the Terms of Service and video posting
21 guidelines and policies that PragerU was required to agree to in order to use the YouTube site.
22 And Google/YouTube do all of this in connection with their control and management of what is
23 arguably the largest public forum for the expression and exchange of ideas and speech that has
24 ever been available to the public in California, the United States, and ultimately the world—one to
25 which Google/YouTube invite the public to express themselves in all manner of speech, and to
26 engage with such speech through viewing and commenting.

1 **FIRST CAUSE OF ACTION**

2 **(California Constitution Article I, section 2)**

3 118. Plaintiff re-alleges and incorporates paragraphs through 1 through 117 above.

4 119. Article I, section 2 of the California Constitution protects the liberty of speech and
5 association, especially in public, quasi-public, and limited public spaces.

6 120. In YouTube, Defendants created and maintain a public forum or its functional
7 equivalent. First, Defendants solicit the general public to use YouTube by representing that its
8 purpose, and primary use is a place dedicated to free speech. Second, Defendants expressly invite
9 the public to visit YouTube to engage in freedom of expression. Third, the size and reach of
10 YouTube's dominance over the expression and exchange of video-based speech is unparalleled.
11 Fourth, the relationship between the ideas sought to be presented and the function or purpose of
12 the property are those of a "public forum," the cyber equivalent of a town square where citizens
13 exchange ideas on matters of public interest or concern. Given these factors, Defendants'
14 regulation of speech is supposed to be viewpoint neutral and the same rules apply equally to all.

15 121. Defendants describe YouTube as a "service that enables more than a billion users
16 around the world to upload" videos, where users are urged to "Broadcast Yourself," "promote
17 yourself" or "do the broadcasting yourself." Furthermore, in YouTube's Terms of Service,
18 Defendants state that YouTube is not legally or otherwise responsible for any third party content:
19 YouTube is not "responsible for the accuracy, usefulness, safety, or intellectual property rights of
20 or relating to such Content"; responsibility for the "FOREGOING RESTS ENTIRELY WITH
21 YOU [THE USER]." These are not the statements of a publisher who tells the public they only
22 print news "fit to print." Defendants do not merely sell edited news content to users; they monetize
23 third party public speech inviting "everyone" to "express themselves" on a "nearly limitless range
24 of topics."

25 122. Google/YouTube's regulation of speech on YouTube is state action because
26 Defendants perform an exclusively and traditionally public function: the regulation of speech
27 within a designated public forum. Accordingly, speech cannot be arbitrarily, unreasonably, or
28 discriminatorily excluded, regulated, or restricted on the basis of viewpoint or the identity of the

1 speaker and any such regulations must fully comply with protections afforded free speech and
2 expression under the Liberty of Speech Clause and the long established jurisprudence governing
3 the Clause's application.

4 123. Plaintiff's videos, which are designed to educate the public, adults and minors
5 alike, on historical events, philosophy, economics, and current events, constitute expressive
6 speech and activity protected by Article I, section 2 of the California Constitution.

7 124. Defendants have restricted Plaintiff's speech and expressive conduct based on
8 subjective, vague, and overbroad criteria that give Defendants unfettered and unbridled discretion
9 to censor speech for any or no reason, no matter how arbitrary or capricious. Those criteria further
10 fail to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited or
11 restricted. Defendants' adoption and application of those criteria on its face violates PragerU's
12 right to free speech as guaranteed by Article I, section 2 of the California Constitution. Further,
13 that invidious potential has been borne out and evidenced by Defendants' application of those
14 policies and procedures to censor PragerU. PragerU has repeatedly asked what it could do
15 differently, or how it could change its videos so that they could be unrestricted or re-monetized,
16 but Google/YouTube have never meaningfully answered those questions.

17 125. Defendants also apply their censorship criteria, including the Terms of Service and
18 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the
19 content of the speech but because of PragerU's identity and political viewpoints. Defendants have
20 restricted content posted by PragerU to the YouTube platform but not restricted similar or
21 identical video content, including identical video content initially produced by PragerU but
22 subsequently copied and then uploaded and posted on the YouTube site by other speakers.
23 Defendants' application of criteria and corresponding restraints on PragerU's speech is arbitrary
24 and capricious and/or is based on political, religious, or other animus towards the identity and
25 viewpoints of the speaker, not the actual content of the speech.

26 126. Further, because Plaintiff is so restrained and punished because of the speakers
27 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and
28 violate Plaintiff's right to free association and assembly. Defendants' actions also violate

1 Plaintiff's right to free association and assembly by blocking viewers' access to videos and
2 comments.

3 127. No compelling, significant, or legitimate reason justifies Defendants' actions. Even
4 if such interests did exist to justify Google/YouTube's restriction and demonetization rules
5 generally, the restrictions imposed on Plaintiff's speech are not narrowly or reasonably tailored to
6 further such interests, because they sweep within their ambit inoffensive and non-graphic
7 discussions intended and designed for educational purposes. Given Google/YouTube's
8 monopolistic control over search results, including video search results as well as online video
9 streaming, Plaintiff has no alternative affording it a reasonable opportunity to reach its full
10 intended audience.

11 128. Google/YouTube's discriminatory policies and application of those policies are not
12 viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to
13 the nature, purpose, and use of the forum. They impose an unreasonable prior restraint on
14 Plaintiff's protected political speech, motivated by impermissible discrimination against Plaintiff's
15 identity and viewpoint.

16 129. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are
17 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through
18 both the Google/YouTube algorithms as well as human agents. And Defendants' actions were
19 done with the intent to deprive Plaintiff and their viewers of their rights under the California
20 Constitution.

21 130. As a direct and proximate result of Defendants' violations of clearly established
22 law regarding public fora, Plaintiff has suffered, and continues to suffer, immediate and
23 irreparable injury in fact, including lost income, reduced viewership, and damage to brand,
24 reputation, and goodwill, for which there exists no adequate remedy at law.

25 131. As the Table demonstrates, there is no rational or reasonably objective basis for
26 treating PragerU video content differently from other speakers. The only difference is that
27 PragerU features speakers and scholars who bring a conservative viewpoint to the issues discussed
28 while the non-restricted videos discuss the same topics from a liberal or left wing perspective.

1 That is discrimination, a violation of the right to free speech, and an unfair business practice for
2 which the law and equity can and will remedy.

3 **SECOND CAUSE OF ACTION**

4 **(California Unruh Civil Rights Act—Civil Code §§ 51, et seq.)**

5 132. Plaintiff re-alleges and incorporates paragraphs through 1 through 131 above.

6 133. Defendants YouTube and Google host business establishments under the Unruh
7 Civil Rights Act, California Civil Code § 51 et seq. Defendants grant the public unrestricted
8 access to YouTube for commercial reasons that are at the core of their business model and the
9 source of virtually all of their revenue.

10 134. Despite their promises of neutrality and a diversity of viewpoints, Defendants
11 engage in a pattern and practice of intentional discrimination in the provision of their services,
12 including discriminating against and censoring Plaintiff PragerU's speech based not on the content
13 of speech but on its political identity and viewpoint. Through the acts complained of herein,
14 Defendants intentionally denied, and aided or incited in denying, Plaintiff full and equal
15 accommodations, advantages, privileges, and services by refusing discriminating against it in
16 administering the YouTube grants program, demonetizing Plaintiff's content, and by placing
17 Plaintiff's videos in Restricted Mode.

18 135. A substantial motivating reason for Defendants' conduct is Defendants' subjective
19 perception of Plaintiff's political identity, viewpoints, and religious orientation, as well as those of
20 others with whom Plaintiff associated. Defendants' discrimination against Plaintiff is arbitrary,
21 capricious, pretextual, and discriminatory. It is also wholly without any legitimate, reasonable
22 business interest, as the content of the restricted and demonetized PragerU videos are completely
23 compliant with the letter and spirit of Defendants' Terms of Service and Community Guidelines.
24 Google/YouTube are censoring and treating Plaintiff and its videos differently out of animus
25 towards Plaintiff's identity and views.

26 136. Defendants' wrongful actions were taken with oppression, fraud and/or malice,
27 effectuated through both the Google/YouTube algorithms as well as manual human review of
28 Plaintiff's videos and appeals. PragerU has repeatedly attempted to remedy the situation, and

1 Defendants have repeatedly refused to unrestrict or re-monetize Plaintiff's videos. And not once
2 have Defendants articulated any good faith reason for their differential treatment.

3 137. As a direct and proximate result of Defendants' unlawful discriminatory actions,
4 Plaintiff suffered, and continues to suffer, irreparable injury in fact, including but not limited to
5 lower viewership, lost advertising opportunities otherwise available to other nonprofits, decreased
6 ad revenue, and reputational damage, for which there exists no adequate remedy at law.

7 138. Defendants' violations of the Unruh Act further entitles Plaintiff to recover
8 statutory damages of up to three times the amount of actual damages in an amount to be proven at
9 trial, or a minimum of \$4,000 per violation.

10 **THIRD CAUSE OF ACTION**

11 **(Business and Professions Code § 17200, et seq.)**

12 139. Plaintiff re-alleges and incorporates paragraphs through 1 through 138 above.

13 140. Defendants have committed acts of unfair competition, as defined by Business and
14 Professions Code § 17200, by engaging in the practices described above.

15 141. Defendants' policies and practices, and their application of the same to Plaintiff,
16 constitute unlawful, unfair or fraudulent business acts or practices within the meaning of Business
17 and Professions Code § 17200. Defendants' policies, as well as their application, violate the
18 policy and spirit the Unruh Act, the Lanham Act, the California Constitution, and prior court
19 decisions. In addition, Defendants compete with third party content providers like Plaintiff, and
20 Defendants' arbitrary and capricious restrictions on their competitors' speech and content
21 significantly threatens or harms competition. Those actions are likely to mislead the public, and
22 do mislead the public, about YouTube, Defendants' videos, Plaintiff, and Plaintiff's videos.
23 Content creators, advertisers, and viewers trust and rely on Defendants for an open marketplace of
24 ideas and expression, and further that when videos are restricted or demonetized, that those videos
25 are truly and in good faith deemed inappropriate for viewing by minors or sensitive viewers.

26 142. There is no utility to the public for Defendants' actions, where those restrictions
27 violate no laws or contractual terms of use and treat Plaintiff and others similarly situated simply
28 because of their perceived politics and identity of their speaker. And to the extent that any utility

1 to Defendants' arbitrarily- and discriminatorily-applied policies did exist, that utility is
2 significantly outweighed by the harm they impose on consumers and the public. Defendants have
3 alternatives to this conduct that would be less harmful to consumers, but do not adopt or apply
4 them because of their bias against Plaintiff and others similarly situated.

5 143. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered,
6 and continues to suffer, immediate and irreparable injury in fact, including lost income, reduced
7 viewership, and damage to brand, reputation, and goodwill, for which there exists no adequate
8 remedy at law.

9 144. Defendants' wrongful actions were taken with oppression, fraud and/or malice.

10 **FOURTH CAUSE OF ACTION**

11 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

12 145. Plaintiff re-alleges and incorporates paragraphs through 1 through 144 above.

13 146. Plaintiff and Defendants entered into written contracts in which Defendants agreed
14 to provide YouTube access, hosting, streaming, and advertising services to Plaintiff. Those
15 contracts give Google/YouTube vague, unfettered, and unilateral discretion to remove, restrict,
16 demonetize, or de-emphasize content as Defendants see fit.

17 147. Implied in those contracts is the implied covenant of good faith and fair dealing.
18 This is particularly true because, in those contracts, Defendants assumed for themselves unilateral
19 and unfettered discretionary control over virtually every aspect of their relationship with
20 Plaintiff—control that Defendants have exercised at their whim, repeatedly and without notice to
21 Plaintiff, and without an opportunity for meaningful discussion or appeal. To the extent that those
22 discretionary powers are valid, Defendants are obligated to exercise them fairly and in good faith.

23 148. Plaintiff did all or substantially all of the significant things required of it under its
24 agreements with Defendants, or was excused from having to do those things. None of Plaintiff's
25 restricted or demonetized videos violates the letter or spirit of any term in Plaintiff's contracts with
26 Defendants.

27 149. Defendants were bound by the implied covenant of good faith and fair dealing in
28 their agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would

1 impair or diminish Plaintiff's rights and benefits of the parties' agreements. Pursuant to the terms
2 of those agreements, Plaintiff was supposed to have equal access to a wide audience to promote its
3 messages, and it was in reliance on Defendants' representations to "help you grow," "discover
4 what works best for you," and "giv[e] you tools, insights and best practices for using your voice
5 and videos," that it chose YouTube as the host of its videos. Also pursuant to those agreements, it
6 was entitled to some portion of the profits that Defendants were making from Plaintiff's content.
7 Instead, Google/YouTube have, by the acts and omissions complained of herein, intentionally and
8 tortiously breached the implied covenant of good faith and fair dealing by unfairly interfering with
9 Plaintiff's rights to receive the benefits of those contracts.

10 150. The foregoing acts and omissions were engaged in by Defendants with the
11 knowledge that they were bound to act consistently with the covenant of good faith and fair
12 dealing. Those acts and omissions were not only failures to act fairly and in good faith, but they
13 were acts of oppression, fraud, and malice.

14 151. As a direct and proximate result of the aforementioned conduct of Defendants,
15 Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact, including
16 lost income, reduced viewership, and damage to brand, reputation, and goodwill, for which there
17 exists no adequate remedy at law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

20 1. For a declaratory judgment that Defendants have violated and continue to violate
21 PragerU's free speech rights, both facially and as applied, under Article I, section 2 of the
22 California Constitution. An actual controversy exists between Plaintiff and Defendants as to
23 whether Defendants' policies and procedures, and their application thereof, violate the Unruh Civil
24 Rights Act, the Lanham Act, and the California Constitution. The correct interpretation is that
25 Defendants' policies and procedures, facially and as applied, violate the Unruh Act, the Lanham
26 Act, and violate Plaintiff's speech and association rights under the California Constitution. Unless
27 the court issues an appropriate declaration of rights, the parties will not know whether Defendants'
28 policies and procedures, and Defendants' application of their policies and procedures, comply with

1 the law, including the California Constitution , and there will continue to be disputes and
2 controversy surrounding Defendants' policies and procedures and application thereof.

3 2. For an injunction requiring Defendants to (i) cease and desist from capriciously
4 restricting, demonetizing, or otherwise censoring any content of PragerU videos uploaded to the
5 YouTube site and (ii) from censoring or restricting speech based on their unfettered discretion or
6 the use or application of arbitrary, capricious, vague, unspecified, or subjective criteria guidelines;

7 3. For compensatory, special, and statutory damages in an amount to be proven at
8 trial, including statutory damages pursuant to, *inter alia*, Civil Code § 51, 51.5, 52, Civil
9 Procedure Code § 1021.5, 15 U.S.C. § 1117, 42 U.S.C. §§ 1981, 1983;

10 4. A civil penalty of \$2,500 for each violation pursuant to Business and Professions
11 Code §§ 17200, 17206, and 17536;

12 5. For punitive damages and exemplary damages in an amount to be proved at trial;

13 6. For restitution of financial losses or harm caused by Defendants conduct and ill-
14 gotten gains and disgorgement of profit obtained from all unlawful conduct in an amount to be
15 proven at trial;

16 7. Attorney's fees and costs of suit;

17 8. For prejudgment and post-judgment interest; and

18 9. For any and all other relief that the Court deems just and proper.

19 **JURY DEMAND**

20 Plaintiff demands trial by jury on all issues of law so triable.

21 DATED: January 8, 2019

Respectfully submitted,

22 BROWNE GEORGE ROSS LLP

23 Eric M. George

Peter Obstler

24
25 By: 

26 Peter Obstler

27 Attorneys for Plaintiff PRAGER UNIVERSITY